

FARGO CITY COMMISSION AGENDA
Monday, February 7, 2022 - 5:00 p.m.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, January 24, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 1st reading of the following Ordinances:
 - a. Relating to Driving While License Suspended or Revoked-Impoundment of License Plates.
 - b. Relating to Hotel and Rooming-House Registers.
 - c. Relating to Human Relations Commission.
- 2. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in EOLA Addition; 1st reading, 1/24/22.
- 3. Application for Games of Chance with USA Wrestling of North Dakota for a raffle on 7/20/22.
- 4. Lease with Great Plains Mercantile Holdings, LLC.
- 5. Extension of the Class "A" Alcoholic Beverage License for Irish Hospitality d/b/a Hennessey's Irish Pub until 8/22/22.
- 6. Concur with the findings of staff and the Liquor Control Board and apply the Penalty Matrix (\$500 fine, first failure) to Sickies Garage Burgers and Brew.
- 7. Memorandum of Offer to Landowner for Easement (Temporary Construction Easement) with Jonathon K. and Sadie M. Erickson (Project No. FM-19-C).
- 8. Memorandum of Offer to Landowner for Permanent Easement (Levee and Retaining Wall for Flood Control), Permanent Easement (Storm Sewer) and Easement (Temporary Construction Easement) with Darrell R. and Jessica L. Johnson (Project No. FM-19-C).
- 9. Bid advertisement for the following Projects:
 - a. No. SR-22-A.
 - b. No. UR-21-A.
- 10. Receive and file Financial Status Report Year to Date through 12/31/21 for major operating funds (unaudited).
- 11. Agreements for Services with Melvis Ngefah, Valerie Luistro and Admira Redic.

- Page 12. Agreements for Services with Morgan Schultz, Makayla Gratton, Noah Glad and Mary Goroski.
13. Benefit Plan Agreement and Group Insurance Policy for Dental Benefits with Blue Cross Blue Shield of ND
 14. Direct the City Attorney to draft Ordinances for adoption of the 2021 International Codes.
 15. Program-Funded State and Local Task Force Agreement with the US Department of Justice, Drug Enforcement Administration.
 16. Energy Conservation Program Grant Agreement from the ND Department of Commerce.
 17. Proposed adjustments to the drivers and dispatchers wages as presented effective 1/24/22 and authorize staff to finalize the Contract Amendment with First Transit, Inc. incorporating these changes.
 18. Bills.
 19. Memorandum of Offer to Landowner for Permanent Easement (Street and Utility), (2) Easement (Temporary Construction Easement) and Permanent Easement (Street and Utility) with Provident Partners, LLC.
 20. Contract and bond for Improvement District No. BN-22-B1.

REGULAR AGENDA:

21. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).**
22. Resolution Directing the Issuance of \$[PAR] Refunding Improvement Bonds, Series 2022A and Prescribing the Terms and Covenants Therefor and Resolution Selling, Establishing Terms and Directing Issuance of Definitive Improvement Warrants on the Funds of Certain Improvement Districts, and Providing for and Appropriating Special Assessments for the Support and Maintenance of Said Funds.
23. Update on Homelessness in the City of Fargo.
24. Recommendation to increase the fee schedule for the Inspections Department.
25. Recommendation to sell City owned property at 1 2nd Street South.
26. Recommendation to authorize staff to submit a request for a Public-Private Partnership for tax increment financing for the redevelopment of the NP Parking Lot site to the City's financial advisors for review.
27. Report on crimes in the City of Fargo.
28. Update on Hate Crime Investigations for the 4th Quarter of 2021.
29. Applications for Property Tax Exemptions for Improvements Made to Buildings:
 - a. Hannah and Anthony Charbonneau, 1340 5th Avenue South (3 year).

- b. Gregg Horner, 1405 25th Avenue South, Unit A102 (3 year).
- c. Kevin and Ann Klein, 431 Harwood Drive South (3 year).
- d. Kathryn Strand, 2408 Lilac Lane North (3 year).
- e. Quill Lakes LLC, 1336 3rd Avenue North (5 year).
- f. Luis Del Rio Navarro and Kari Steen Del Rio, 315 University Drive South (5 year).
- g. Joshua Boschee, 517 1st Street North (5 year).
- h. Jeffrey Muhle, 1910 16th Street South (5 year).
- i. Benjamin and Anna Bergstrom, 93 18th Avenue North (5 year).
- j. Richard and Janice Hanson, 1409 19th Street South (5 year).
- k. Krista and Mark Holter, 1618 5th Street North (5 year).

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310 at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

12

AN ORDINANCE AMENDING SECTION 8-0309 OF ARTICLE 8-03 OF CHAPTER 8,
OF THE FARGO MUNICIPAL CODE RELATING TO
DRIVING WHILE LICENSE SUSPENDED OR REVOKED –
IMPOUNDMENT OF LICENSE PLATES

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in
accordance with Chapter 40-05.1 of the North Dakota Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City
shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said
home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict
therewith and shall be liberally construed for such purposes; and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to
implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Section 8-0309 of Article 8-03 of Chapter 8 of the Fargo Municipal Code is hereby
amended to read as follows:

8-0309. - Driving while license suspended or revoked—Impoundment of license plates.

It shall be unlawful for any person to drive a vehicle on any ~~public way, street, alley or
other public way~~ public or private way, street, alley, parking lot, or area to which the public
has a right of access for vehicular use, within the city, at a time when his privilege to do so
is suspended or revoked in any jurisdiction. If the suspension or revocation was imposed

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1 for violation of § 39-08-01 of the North Dakota Century Code or equivalent statute or
2 ordinance or was governed by § 39-06-31 or chapter 39-20 of the North Dakota Century
3 Code, the sentence must be at least four consecutive days' imprisonment and such fine as
4 the court deems proper. Upon conviction for violation of this ordinance, the court may, in
5 addition to the imposition of the penalty, order the motor vehicle number plates of the
6 motor vehicle owned by the offender at the time of the offense to be impounded by the
7 chief law enforcement officer of the city for the duration of the period of suspension of the
8 offender's driver's license or driving privileges by the licensing authority. The impounded
9 motor vehicle number plates may be released, upon the order of the court, to a bona fide
10 purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of
11 title issued by the registrar of motor vehicles.

12 Section 2. Effective Date.

13 This ordinance shall be in full force and effect from and after its passage, approval and
14 publication.

15 Section 3. Penalty.

16 Every person, firm, or corporation violating an ordinance which is punishable as a Class B
17 misdemeanor shall be punished by a fine not to exceed \$1,500.00, or by imprisonment not to
18 exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court
19 to have power to suspend said sentence and to revoke the suspension thereof, per Section 1-
20 0301(A) and 1-0305(A)(1) of the Fargo Municipal Code.

21 _____
22 Dr. Timothy J. Mahoney, Mayor

23 Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

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FARGO, NORTH DAKOTA

16

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-2201 OF ARTICLE 25-22 OF CHAPTER 25,
OF THE FARGO MUNICIPAL CODE
RELATING TO HOTEL AND ROOMING-HOUSE REGISTERS

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in
accordance with Chapter 40-05.1 of the North Dakota Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City
shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said
home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict
therewith and shall be liberally construed for such purposes; and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to
implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Section 25-2201 of Article 25-22 of Chapter 25 of the Fargo Municipal Code is hereby
amended to read as follows:

25-2201.— Registers to be kept.

Every person, corporation, co-partnership, or association conducting, keeping, or
managing or operating, as owner, lessee, agent, or in any other capacity, any hotel, rooming
house or lodginghouse within the corporate limits of the city shall at all times keep and
maintain a standard hotel register in form satisfactory to the chief of police, in which shall
be inscribed the names and permanent residences of all guests or persons renting or

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1 occupying rooms in such hotel, rooming house or lodginghouse, which register shall be
2 signed by the person renting a room or rooms, or by someone under his direction. Before
3 any person shall be permitted to occupy such room or rooms, the manager of the hotel,
4 rooming house, or lodginghouse, or his agent, shall write in such register the number of the
5 room or rooms which such guest or person is to occupy, together with the time when such
6 room is rented. Such register shall be preserved for a period of not less than three years
7 from the date of the renting of such room ~~and shall be at all times open to inspection by~~
8 ~~any police officer of the city.~~

9 Section 2. Effective Date.

10 This ordinance shall be in full force and effect from and after its passage, approval and
11 publication.

12 Section 3. Penalty.

13 Every person, firm or corporation violating an ordinance which is punishable as an
14 infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power
15 to suspend said sentence and to revoke the suspension thereof, as provided in Section 1-
16 0301(B) of the Fargo Municipal Code.

17 _____
18 Dr. Timothy J. Mahoney, Mayor

19 Attest:

20 _____
21 Steven Sprague, City Auditor

22 First Reading:
23 Second Reading:
Final Passage:
Publication:

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10

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 15-02 OF CHAPTER 15
OF THE FARGO MUNICIPAL CODE
RELATING TO THE HUMAN RELATIONS COMMISSION

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purposes; and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Article 15-02 of Chapter 15 of the Fargo Municipal Code is hereby amended to read as follows:

ARTICLE 15-02
HUMAN RELATIONS RIGHTS COMMISSION

Section	
15-0201	Creation of Human Relations <u>Rights</u> Commission.
15-0202	Number of members--Term of members--Appointment of members--Filling vacancies.
15-0203	President of commission--Meetings--Record to be kept.
15-0204	Goals of the Human Relations <u>Rights</u> Commission

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- 15-0205 Powers and duties of commission.
15-0206 Commission advisory in nature.

15-0201. Creation of Human ~~Relations~~ Rights Commission.--There is hereby created and established a body to be known as the Human ~~Relations~~ Rights Commission, whose purpose is to promote the acceptance and respect for diversity through educational programs and activities and to discourage all forms of discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, participation in lawful activity off the employer's premise during nonworking hours which is not in direct conflict with the essential business-related interests of the employer or sexual orientation.

15-0202. Number of Members--Term of Members--Appointment of Members--Filling Vacancies. --The Human ~~Relations~~ Rights Commission shall consist of eleven members, who shall be appointed by the president of the board of city commissioners, subject to confirmation by the Board of City Commissioners. The terms of office of such commissioners shall be as follows, to wit: three members who shall serve until July 1, 2021; four members who shall serve until July 1, 2022; and four members who shall serve until July 1, 2023. At the expiration of the terms of the members as aforesaid, members shall be appointed for three-year terms. If a vacancy occurs otherwise then by expiration of a term, it shall be filled by appointment for the unexpired portion of the term. Notwithstanding the expiration of a member's term, such member may serve until his or her successor has been appointed and qualified.

15-0203. President of commission--Meetings--Record to be kept. --The Human ~~Relations~~ Rights Commission shall elect its president for a term of one year from among the appointed members and shall hold regular monthly meetings. The commission shall keep a record of its resolutions, findings and the determinations and such record shall be a public record. The commission may appoint such subcommittees from among the appointed members as it may be necessary for its work.

15-0204. Goals of the Human ~~Relations~~ Rights Commission. --The goals of the Human ~~Relations~~ Rights Commission are:

- A. To provide leadership in the areas of civil rights.
- B. To encourage and educate the public in the promotion of civil rights.
- C. To identify issues of principal concern to members of the community in the area of civil rights and to recommend priorities and objectives to the board of city commissioners.
- D. To encourage adherence to federal and state laws regarding civil rights, including Chapter 14-02.4 of the North Dakota Century Code, through education, conciliation and mediation.

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15-0205. Powers and Duties of Commission. --The Human ~~Relations~~ Rights Commission shall:

- 1 A. Recommend to the board of city commissioners, from time to time, action
2 and programs in furtherance of the purpose of the Human ~~Relations~~ Rights
3 Commission as described in this article.
4 B. Consult and advise with public officials and agencies and with private
5 individuals and organizations to provide education regarding civil rights.
6 The commission may, in its discretion, assist aggrieved individuals, but
7 such assistance shall consist of information, guidance and, in its discretion,
8 conciliation and mediation services.

15-0206. Commission advisory in nature. --The Human ~~Relations~~ Rights Commission shall be advisory in nature and shall submit all reports and determinations to the board of city commissioners of the city of Fargo. Final authority shall be in the board of city commissioners.

Section 2. Effective Date.

This ordinance shall be in full force and effect from and after its passage and approval.

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:

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ORDINANCE NO. _____

(2)

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN EOLA ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in EOLA Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on January 4, 2022; and,

WHEREAS, the rezoning changes were approved by the City Commission on January 24, 2022,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

Lots One (1) through Two (2), Block One (1), and Lots One (1) through Five (5), Block Two (2) of EOLA Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "GC", General Commercial, District, with a "PUD", Planned Unit Development, District, as established by Fargo Municipal Ordinance No. 5300, to "GC", General Commercial, District, repealing and replacing the "PUD", Planned Unit Development, District, as follows:

A. Allowed Uses.

1. In addition to the uses allowed within the "GC", General Commercial zoning district, residential use shall also be allowed.

B. Residential Density.

1. The maximum residential density allowed shall be seventy (70) units per acre.

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C. Parking. The following parking requirements are as follows:

1. 1.16 parking spaces per residential unit;
2. 1 space per 230 square feet for commercial uses of retail, office, and restaurant;
3. Parking can be located anywhere in the development; and
4. All other parking requirements shall be governed by the Land Development Code.

D. Setbacks.

1. A reduction to 10 feet on the front, side street, and rear setback.

E. Landscaping.

1. The parking lot buffer requirement shall be waived.
2. Perennial open space plant units shall be increased to a maximum of 40% of the requirement.
3. Open space plant unit placed in the front and street side shall be reduced to 25%.
4. Open space plant units may be located collectively within the development.
5. For purposes of determining open space plant units, active recreation area square footages shall be excluded from calculations.
6. At the final phase of development, all required open space plant units will be verified. Landscaping will increase with review of phased PUD Final Plans. Landscape plans will be submitted with each Final Plan for internal review.

F. Height.

1. The maximum building height for the overall development and within the proximity of residentially zoned property shall be 130 feet.

G. Open Space.

1. The development shall have a minimum of 20% open space.

H. Additional Standards.

1. All primary buildings shall be constructed or clad with materials that are durable, economically-maintained, and of a quality that will retain their appearance over time, including but not limited to natural or synthetic stone; brick; stucco; integrally-colored, textured or glazed concrete masonry units; high-quality pre-stressed concrete systems; or glass. Natural wood or wood paneling shall not be used as a principal exterior wall material, but durable synthetic materials with the appearance of wood may be used.

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1 2. Color schemes shall tie building elements together, relate pad buildings within
2 the same development to each other, and shall be used to enhance the architectural
3 form of a building.

4 3. All building façades greater than 150 feet in length, measured horizontally,
5 shall incorporate a varied material palette. The varied material palette shall be
6 configured whereas the primary material and color shall not exceed 50% of the
7 building façade, the secondary material and color shall not exceed 30% of the
8 building façade, tertiary material and color shall not exceed 20% of the building
9 façade, and any other materials and/or colors shall not exceed the percentage of
10 the tertiary material. Material square footage shall be inclusive of all glazing and
11 door openings as well as deck projections.

12 4. Ground floor façades that face public streets shall have arcades, display
13 windows, entry areas, awnings, or other such features along no less than 60% of
14 their horizontal length. If the façade facing the street is not the front it shall
15 include the same features and/or landscaping in scale with the façade.

16 5. Flat roofs and rooftop equipment, such as HVAC units, shall be concealed from
17 public view by parapets, including but not limited to the back of the structure.
18 The average height of such parapets shall not exceed one third of the height of the
19 supporting wall.

20 6. Loading facilities shall not be located at the front of structures where it is
21 difficult to adequately screen them from view. All loading and service areas shall
22 be screened from the view of adjacent public streets and public parks through a
23 structure and/or landscaping.

7. Dumpsters and outdoor storage areas must be completely screened from view.
Collection area enclosures shall contain permanent walls on three (3) sides with
the service opening not directly facing any public right-of-way or residentially
zoned property. The fourth side shall incorporate a metal gate to visually screen
the dumpster or compactor.

8. Separate vehicular and pedestrian circulation systems shall be provided. An on-
site system of pedestrian walkways shall be designed to provide direct access and
connections to and between the following:

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- a. The primary entrance(s) to each commercial building, including pad site buildings.
- b. Any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the commercial development.
- c. Parking areas or structures that serve each primary building.
- d. Connections between the on-site (internal) pedestrian walkway network and any public sidewalk system located along adjacent perimeter streets shall be provided at regular intervals along the perimeter street as appropriate to provide easy access from the public sidewalks to the interior walkway network.
- e. Any public sidewalk system along the perimeter streets adjacent to the development.
- f. Where practical and appropriate, adjacent land uses and developments, including but not limited to residential developments, parks, retail shopping centers, and office buildings.

I. The following uses are prohibited:

1. Detention facilities;
2. Adult entertainment center;
3. Off-premise advertising signs;
4. Portable signs;
5. Vehicle repair;
6. Industrial service;
7. Manufacturing and production;
8. Warehouse and freight movement; and
9. Aviation/surface transportation.

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

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1 Section 3. This ordinance shall be in full force and effect from and after its passage and
2 approval.

3
4
5
6 (SEAL)

Timothy J. Mahoney, M.D., Mayor

7 Attest:
8

9
10 _____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 9338 (04-2020)

(3)

V 1454
2/3/22

Applying for (check one)

☒ Local Permit ☐ Restricted Event Permit*

Games to be Conducted

☐ Bingo ☒ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker* ☐ Twenty-One* ☐ Paddlewheels*
Poker, Twenty-One, and Paddlewheels may be conducted **Only** with a Restricted Event Permit. Only one permit allowed per year.

Name of Organization or Group of People permit is issued to USA WRESTLING OF NORTH DAKOTA		Dates of Activity 7-20-2022	
Organization or Group Contact Person DEAN SHEARER		Title or Position TREASURER	
Business Address 2515 76th AVE N.		City FARGO	State ND
Mailing Address (if different)		City	State ND
Site Name (where gaming will be conducted) FARGO DOME		City	State ND
Site Address 1800 UNIVERSITY DR. NORTH		City FARGO	State ND
		ZIP Code 58102	County CASS

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
RAFFLE	(1) \$1000 SCHWEL'S GIFT CARD	1000
	(3) \$500 SCHWEL'S GIFT CARD	1500
	(10) \$200 SCHWEL'S GIFT CARD	2000
	(20) \$100 SCHWEL'S GIFT CARD	2000

Total (limit \$40,000 per year)

6500⁰⁰

Intended Uses of Gaming Proceeds

TO ASSIST 110-130 YOUTH + HS WRESTLERS ATTEND NATIONAL DUAL EVENTS - OKLAHOMA

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

☐ Yes ☒ No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? (If yes, the organization or group does not qualify for a local permit or restricted event permit)

☐ Yes ☒ No

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)

☒ No ☐ Yes - Total Retail Value: _____ (This amount is part of the total prize limit of \$40,000 per year)

Organization or Group Contact Person

Name DEAN SHEARER	Title TREASURER	Telephone Number 701-371-2738	E-mail Address shearerringneckhunter@hotmail.com
Signature of Organization or Group's Top Official DEAN R. SHEARER		Title TREASURER	Date 2-2-2022

4

MEMORANDUM

TO: Fargo City Commission

FROM: Jim Gilmour, Director of Strategic Planning and Research 

DATE: February 2, 2022

SUBJECT: Police and Parking office space in the Mercantile Building

The Mercantile public-private partnership agreement included the option for the City of Fargo to lease space in the Mercantile building for the Police Department and a Parking office. This space will be along 4th Avenue North, adjacent to the 5th Street entrance to the parking garage.

The Mercantile building is nearing completion and work can begin soon to fit-up space for these uses. A 10-year lease has been prepared along with an agreement to build the interior space to suit the City needs.

The Finance Committee is recommending approval of the lease and the build-to-suit agreement.

Recommended Motion:

Approve a lease with Great Plains Mercantile Holdings for office space and an agreement with Kilbourne Group to build out the office space.

Attachments

CC: William Ahlfeldt, Police
Mark Williams, Planning

LEASE

THIS LEASE is made and effective this 15th day of December, 2021 (the “Effective Date”), by and between Great Plains Mercantile Holdings, LLC, a North Dakota limited liability company, whose address is Attn: Mike Allmendinger, Vice-President, 210 Broadway North, Suite 300, Fargo, ND 58102 (“Landlord”), and City of Fargo, North Dakota, a North Dakota municipal corporation, whose address is Attn: City Auditor, Fargo City Hall, 200 N. 3rd Street, Fargo, ND 58102 (“Tenant”).

RECITALS

A. Landlord owns a building and other improvements located at and commonly known as 401 Broadway St. N, Fargo, ND 58102 (the “Building”), which Building comprises Unit 1 of a larger condominium project known as, Mercantile Condominium, a condominium created under a Declaration Establishing a Plan for Condominium Ownership recorded or to be recorded in the office of the Cass County, North Dakota, Recorder (the “Project”). The Building consists of commercial space on the ground floor (the “Commercial Space”) and residential space on floors above. A drawing depicting the first floor of the Project, including the Commercial Space and other improvements adjacent to the Commercial Space, is attached as Exhibit A.

B. Tenant wishes to lease from Landlord, and Landlord wishes to lease to Tenant, certain space in the Commercial Space known as Suites 511 and 515, 4th Avenue N., Fargo, 58102, which comprises approximately 2218 gross leasable square feet, and is depicted in cross-hatching on as Exhibit A (the “Premises”), subject to the terms and conditions outlined below.

AGREEMENTS

In consideration of the recitals and following mutual agreements, the parties agree as follows:

1. READING PREMISES/LANDLORD’S AND TENANT’S WORK.

A. Landlord shall, at its expense, ready the Premises for Tenant’s occupancy by completing the work described on attached Exhibit B (“Landlord’s Work”). Any work on or in the Premises other than or in addition to the items set forth as Landlord’s Work shall be “Tenant’s Work” and performed by Tenant and at Tenant’s own cost and expense (other than as may be eligible for reimbursement pursuant to the Allowance). Landlord shall pay an allowance up to \$55,450.00 for the cost of Tenant’s Work (the “Allowance”) in accordance with and subject to other provisions set out below. Any work, materials, equipment or fixtures other than those items specifically described as Landlord’s Work, which Landlord installs or constructs in the Premises on Tenant’s behalf, shall be paid for by Tenant within 30 days after Tenant’s receipt of a bill therefore. Except as to the Landlord’s Work, Tenant accepts the Premises in an “AS-IS, WHERE-IS AND WITH-ALL-FAULTS-AND-VIRTUES” condition.

B. Landlord shall use commercially reasonable efforts to substantially complete Landlord’s Work on or prior to January 31, 2022 (the “Target Delivery Date”). Subject to Section 26, and unless any delays on Tenant’s part have materially contributed

to Landlord's inability to substantially complete Landlord's work by the Target Delivery Date, if Landlord has not substantially completed Landlord's Work within 90 days after the Target Delivery Date, Tenant shall have the right and option, by written notice given to Landlord not later than 10 days following such 90-day period, to cancel this Lease. Landlord shall notify Tenant in writing when Landlord's Work has been substantially completed to the extent that Tenant may begin occupying the Premises for construction of Tenant's Work and/or to begin moving into the Premises (the "Actual Delivery Date"). Landlord's Work shall be completed in accordance with the requirements of the Americans with Disabilities Act.

C. Tenant shall submit to Landlord for Landlord's prior approval, the proposed working plans and specifications for Tenant's Work, including Tenant's signage. Landlord's approval or disapproval (and the reasons for any disapproval) shall be communicated to Tenant within 15 business days following Landlord's receipt of Tenant's plans and specifications for Tenant's Work. Landlord's approval shall not be unreasonably withheld so long as such plans and specifications: (i) are consistent with the requirements of this Lease; (ii) are unlikely to affect Project systems, the structure of the Project, the safety of the Project or the peaceful, safe and comfortable habitability of other tenants at the Project; (iii) do not impair Landlord's ability to furnish services to Tenant or other tenants of the Building; (iv) do not contain or use hazardous, toxic or dangerous materials or substances; (v) do not adversely affect the appearance of the Project from outside of the Premises; and/or (vi) do not prohibit or create a breach under any existing leases with other tenants at the Building or financing document related to the Building. Said reasons shall not, however, be exclusive of other reasons for which Landlord may withhold consent, whether or not such other reasons are similar or dissimilar to the foregoing. Landlord shall be deemed to have approved tenant's plans for all purposes if Landlord fails to respond within the 10-business day period, unless Tenant shall have failed to respond to reasonable requests for additional information from Landlord within the 10-day period. If Landlord disapproves any portion of Tenant's plans and specifications, Tenant shall, within a reasonable period of time after Landlord's disapproval, submit substitute plans and specifications or portions thereof for Tenant's Work which satisfy Landlord's reasons for disapproval, and the same provisions as hereinabove set forth in this subsection shall apply with respect to Landlord's approval or disapproval of such substitute plans and specifications or portions thereof and, if necessary, Tenant shall resubmit such plans and specifications until same have been approved by Landlord. When such plans and specifications have been approved by Landlord (herein the "Approved Plans"), sets of the Approved Plans shall be signed by Landlord and Tenant, and at least one set so signed shall be delivered to each party. Tenant shall not be allowed to make any material modification to the Approved Plans without submitting revised plans to Landlord, and obtaining Landlord's consent as provided herein.

D. On and following the Actual Delivery Date, Tenant shall be entitled to construct the Tenant's Work in the manner required hereunder. Tenant shall enter into construction contracts for Tenant's Work with licensed, bonded general contractor(s). Promptly after receipt of all approvals and permits, Tenant shall cause said contractors to commence Tenant's Work and prosecute the same diligently to completion in a good and workmanlike manner, all in strict conformance with Approved Plans and in compliance

with all Federal, state and local laws, codes, ordinances, rules, regulations, and permits relating thereto. During the period between when Tenant begins to occupy the Premises for completion of Tenant's Work and/or to move in, through the date immediately preceding the Rent Commencement Date, Tenant shall occupy the Premises in accordance with all terms, covenants and conditions of this Lease, provided that Tenant shall be under no obligation to pay Base Rent or Additional Rent during such Period.

E. Without first obtaining Landlord's written approval and consent Tenant shall not make, cause to be made, or contract for any alterations, additions, or improvements to the Premises, or other portions of the Project or to install therein any trade fixture, exterior sign, floor covering, interior or exterior lighting, plumbing fixtures, heating and air conditioning equipment, shades or awnings, or make any changes to the exterior, or structural changes or additions to the Project or mechanical systems serving the Project. At the time Tenant requests Landlord's consent for any such improvement, alteration, or addition, Tenant shall deliver to Landlord Tenant's drawings and specifications for the proposed work.

F. With regard to Tenant's Work and any labor or materials furnished to Tenant, Tenant shall do all things reasonably necessary to prevent the filing of any construction liens or encumbrances against the Project, or any part thereof, or upon any interest of Landlord or any mortgagee in any part of the Project by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone in possession of the Project or any part thereof through Tenant. Tenant agrees to promptly pay all sums of money in respect of any labor, services, materials, supplies, or equipment furnished or alleged to have been furnished to Tenant in, at or about the Project or furnished to Tenant's agents, employees, contractors or subcontractors, which may be secured by any construction or other type of lien against the Project, or any part thereof or any interest therein. In the event of the receipt of any notice of intention to claim such a lien, a demand for payment, or a construction lien statement, Tenant shall immediately notify Landlord thereof, and shall: (i) cause the same to be discharged of record with 10 days thereafter; or (ii) if in good faith Tenant determines that such lien should be contested, Tenant shall furnish such security as Landlord requires, in its sole and absolute discretion, to protect Landlord's interests, and those of its lender(s), in the Project. Failure of Tenant to discharge the lien in the manner required hereunder shall constitute a default under this Lease and, in addition to any other remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same of record by paying the amount claimed to be due, and the amount so paid by Landlord and all costs and expenses incurred by Landlord therewith, including reasonable attorney's fees, shall be due and payable by Tenant to Landlord upon demand.

G. All alterations, installations, additions and improvements made upon or for the benefit of the Premises by either party are and shall be the property of Landlord, and unless Landlord otherwise elects (by giving notice thereof to Tenant not less than 15 days after the expiration or other termination of this Lease), shall remain upon and be surrendered with the Premises as a part thereof at the expiration or sooner termination of this Lease. Furniture, trade fixtures, equipment and personal property that are not Landlord's Work, are easily removable and are acquired by Tenant at its expense shall

remain Tenant's property and shall be removed prior to the end of the Term, and Tenant shall promptly repair any damage caused by such removal.

H. Tenant will not place or suffer to be placed or maintained anywhere outside the interior of the of the Premises any sign, awning or canopy, lighting, advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Premises or Project, all without first obtaining Landlord's written approval and consent, which consent shall not be unreasonably withheld. If Landlord chooses (at its sole and absolute discretion) to install a multi-tenant sign to identify tenants of the Commercial Space in the area in which the Premises is located, Tenant shall be entitled to a presence on such sign, provided Tenant shall make arrangements and pay for the design, preparation, installation and maintenance of its panels thereon, and shall use a sign company designated or approved in advance by Landlord. Tenant shall remove all signage at the Project upon expiration or earlier termination of the Lease and shall repair all damage caused by the installation, maintenance and/or removal of all signage.

I. Except as expressly provided herein, neither Tenant nor Tenant's agents, employees, or independent contractors, shall be permitted to go upon, use, alter, or work in any way upon any part of the roof of the Project without the express written consent of Landlord. Tenant shall be fully responsible to Landlord for any damages to the roof occasioned by the acts of Tenant and its agents, employees, or independent contractors resulting from their use of the roof.

J. Following the Rent Commencement Date, and within 30 days after Tenant furnishes Landlord the Reimbursement Documentation, and so long as Tenant is not then in Default under this Lease, Landlord shall reimburse Tenant up to the amount of the Allowance for the cost of Tenant's Work related to the following items that shall, notwithstanding anything to the contrary in this Lease, constitute Landlord's property and shall remain on and with the Premises at the termination of the Lease: concrete floor, any appropriate sub-floor materials and floor covering; interior walls; lighting fixtures throughout the Premises; plumbing rough-ins, lines and fixtures; ductwork for heating and cooling other than the ductwork for heating and cooling that is included in Landlord's Work; interior doors; door casing and baseboard; and paint and other wall coverings. The "Reimbursement Documentation" shall include an itemization of the eligible work and materials and amounts for same and full and final lien waivers from all contractors, subcontractors and material suppliers involved with Tenant's Work.

2. **USE.** Tenant shall occupy and use the Premises only for the provision of governmental services or services in direct support of city-government-related activities (the "Permitted Use"). For purposes of clarification, the operation of any establishment that offers the sale of food, beverages or other goods or the provision of services directly to the public as opposed to, or on behalf of, a governmental entity is not a Permitted Use. A change in use must be approved by Landlord in writing. Tenant shall be responsible, at its cost, for obtaining all permits, licenses and the like required for its use, and Tenant shall comply with, and not commit or permit any act to be performed on the Project, or any omission to occur, which is in violation of any statute, regulation, ordinance, permit, license, order or the like of any governmental body pertaining to its

use of the Project. Tenant shall not commit or permit any act to be performed on the Project, or any omission to occur, which will increase the insurance rate of any part of the Project (unless Tenant agrees to be responsible for same) or which will be in violation of any insurance policy carried on any part of the Project by the Landlord or in the Landlord's favor. Tenant shall comply with all covenants and restrictions of record, if any, and shall not use the Premises for any use or purpose restricted by, the use restrictions set out at Exhibit C.

3. **COMMON AREAS.** Tenant shall be entitled to the non-exclusive use, in common with others entitled thereto, of such sidewalks, entrances, elevators, stairwells, hallways, restrooms and the like, as exist and as are designated by Landlord, from time to time, for the common use or benefit of tenants, occupants and other patrons of the Commercial Space and their employees, agents, servants, customers and other invitees and that are reasonably necessary for Tenant's use and enjoyment of the Premises (the "Common Areas"). Tenant's use of the Common Areas shall be subject to the limitations and restrictions set forth in this Lease and further subject to reasonable rules and regulations for the use of Common Areas as adopted from time to time by Landlord. Landlord reserves the right, at any time, to reasonably reduce, increase or otherwise change the dimension, location, layout and nature of the Common Areas and facilities and to make other alterations or additions to the Project; provided, however, Landlord shall undertake all such actions in a manner so as to minimize interfere with Tenant's business in the Premises as is commercially practicable under the circumstances. Any such reasonable actions by Landlord shall not constitute constructive or actual eviction, and Tenant will not be entitled to any compensation or diminution of rent or abatement of rent as a result thereof.

4. **PARKING.** There are no parking spaces located at the Building, and Tenant is not granted the right to use any parking spaces, or afforded any parking rights, under this Lease.

5. **TERM.** This Lease shall be binding upon the parties and otherwise effective as of the Effective Date, but the Term of this Lease and Tenant's obligation to pay Base Rent and Additional Rent shall be for a period of approximately 120 months, beginning on the earlier to occur of (the "Rent Commencement Date"): (a) 90 days following the Actual Delivery Date; or (b) the date Tenant first conducts business operations on the Premises; and ending on the last day of the 120th full calendar month thereafter. Tenant shall have one option to extend the Term for a period of 60 calendar months, which option shall be exercised, if at all, by written notice to Landlord given not less than 180 days prior to the end of the Initial Term. The initial fixed approximately 60-month period of time during which Tenant has the right to occupy the Premises and is obligated to pay rent is sometimes referred to as the "Initial Term", and the full period of time during which Tenant occupies the Premises and is obligated to pay rent, i.e., the Initial Term and during the extension period, is referred to as the "Term".

6. **BASE RENT.**

A. Tenant shall pay to Landlord at the address set out in the introductory paragraph of this Lease monthly base rent ("Base Rent"), by the first of the month, in advance, without offset, notice or demand. From and after the Rent Commencement Date and through the end of the 12th full calendar month of the Term, Base Rent shall be \$4,066.33. The first day of the 13th full calendar month of the Term, and each anniversary date of such day during the Term, shall be deemed an "Adjustment Date". On each

Adjustment Date thereafter during the Initial Term, Base Rent shall increase by 2.5% over the Base Rent for the calendar month immediately preceding the Adjustment Date. If Tenant exercises its option to extend the Term, on each Adjustment Date during such extension of the Term, Base Rent shall increase by 3% over the Base Rent for the calendar month immediately preceding the Adjustment Date. Base Rent for any partial calendar months shall be prorated based upon the number of days of occupancy during such calendar month.

B. When the Rent Commencement Date has been determined, Landlord and Tenant shall promptly thereafter execute and deliver to one another a statement, in duplicate, specifying the Rent Commencement Date. Failure of Landlord and Tenant to execute Exhibit D shall not affect either party's obligations under this Lease.

7. **OPERATING COSTS.**

A. Tenant shall, for the entire Term, without any abatement, set-off or deduction therefrom, pay to Landlord as additional rent its Pro Rata Share of all Operating Costs. Operating Costs shall include those costs and expenses incurred in connection with the operation, preventive and corrective maintenance, repair and replacement of the entire Commercial Space ("Operating Costs"), including without limitation: a reasonable allocable share of condominium fees, dues, assessments or similar costs charged by the condominium association to which the Project is subject; any fees paid to a third-party to manage the Commercial Space; costs associated with the repair, maintenance and replacement of mechanical and electrical systems serving the Commercial Space that are the Landlord's responsibility; all real estate taxes, special assessments, other governmental impositions, including but not limited to amounts payable under assessment agreements, gross receipts taxes and taxes on rentals (other than income taxes) relating to the Commercial Space and that accrue or become a lien against or are payable in respect of the Commercial Space during the Term; cost of acquisition, maintenance, and modification of general Commercial Space signs; snow removal; parking lot maintenance, repair, restriping, resurfacing and clean-up; grounds and landscape maintenance; repair and replacement of on-site water and irrigation, electrical, water, sewer and any other utility lines, equipment and other elements; all electrical, water, sewer or other utility charges pertaining to the common areas or the Premises and other premises in the Commercial Space and not separately metered and paid to the utility provider directly by Tenant; maintenance and repair of elevators; the cost of any insurance carried by Landlord; janitorial, refuse and cleaning services; all employment costs including salaries, wages and fringe benefits; charges under maintenance and service contracts; all supplies purchased for use in the Commercial Space; depreciation of the costs of capital improvements other than those capital improvements comprising the original construction of the Commercial Space; any and all other costs of operation, whether ordinary or extraordinary; and an administrative fee equal to 15% of the aggregate of all such items

B. Operating Costs shall not include direct out-of-pocket costs of the following: leasing commissions and costs of marketing; the cost of constructing leasehold improvements; payments of principal and interest on any mortgages, deeds of trust or other financing upon the Building; the costs of providing any heat, cooling or any other utility to

the premises occupied by another Commercial Space tenant unless the same utility is available to Tenant on a comparable basis; depreciation of the capital cost of the Building except as provided above; the cost of any items for which Landlord is directly reimbursed by insurance proceeds, condemnation awards, a tenant of the Building or the like; wages, salaries or other compensation paid to the principals of Landlord; costs associated with the operation of the business of the entity which constitutes Landlord, which costs are not directly related to maintaining or operating the Building (by way of example, the formation of the entity, internal accounting and legal matters, including but not limited to preparation of tax returns and financial statements and gathering of data therefore, costs of defending any lawsuits relating to maintaining or operating the Building, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building, and costs of any disputes between Landlord and its employees); any expense representing an amount paid for products or services (other than overall Commercial Space management) to a person or entity relating to or affiliated with Landlord which is in excess of the fair market value of such services and products; and fees incurred in disputes with tenants.

C. Tenant's "Pro Rata Share" of Operating Costs is a fraction, the numerator of which is the gross leasable floor area of the Premises, and the denominator of which is the gross leasable floor area of the Commercial Space. The parties acknowledge and agree that Tenant's Pro Rata Share is 13.08%. If and as areas of the Building are redeveloped such that the amount of Commercial Space in the Building changes, Commercial Space shall be remeasured in a manner consistent with how the Premises and other Commercial Space is measured and Tenant's Pro Rata Share shall be recalculated and equitably adjusted.

D. As frequently as Landlord shall deem appropriate, Landlord may give Tenant notice of Landlord's estimate of Operating Costs for the then-current Lease Year ("Estimated Operating Costs"). Tenant shall pay on the first day of each calendar month during the Term, as additional rent hereunder, one-twelfth (or ratable portion thereof for partial calendar months) of Tenant's Pro Rata Share of Estimated Operating Costs.

E. Within a reasonable time after the expiration of each Lease Year, Landlord shall submit to Tenant a statement setting forth (a) the actual Operating Costs of the Commercial Space for such Lease Year ("Actual Operating Costs"), (b) Tenant's Pro Rata Share of Actual Operating Costs, and (c) the aggregate of Tenant's payments of Estimated Operating Costs for such Lease Year. Within 30 days after the delivery of such statement (including any statement delivered after the expiration or termination of the Term), the party in whose favor the difference, if any, between (b) and (c) exists shall pay the amount of such difference to the other; provided, however, that overpayments by Tenant may at Landlord's option be credited against future payments of Estimated Operating Costs except with respect to the reconciliation performed following the last Lease Year of the Term.

F. Landlord's books and records relating to Actual Operating Costs for any particular Lease Year shall be available for inspection by Tenant, during the 180-day period following delivery of Landlord's statement with respect to such Lease Year, and during normal business hours upon prior appointment with Landlord at Landlord's office.

Tenant's failure to contest Actual Operating Costs during such 180-day period shall be deemed Tenant's final acceptance of such amounts.

G. "Lease Year" shall mean the 12 month period beginning on the first day of the first full calendar month of the Term, and the 12 month period beginning on each anniversary date of such first day during the Term; or if Landlord chooses, some other 12 month period, in which case, the first and last Lease Years may be shorter than a full 12 months, and the amounts of Operating Costs for which Tenant is responsible shall be adjusted for the portion of any such shortened Lease Year occurring during the Term.

H. The sums due under this Section 7 from Tenant to Landlord shall sometimes be referred to as "Additional Rent". Base Rent, Additional Rent and all late charges, interest, attorney's fees and all other amounts due from Tenant to Landlord under this Lease shall sometimes be referred to as "Rent".

8. **Intentionally Omitted.**

9. **SEPARATELY METERED UTILITIES/INSURANCE.** Tenant will, to the extent possible, taking into consideration the metering system at the Building, establish in its name and pay directly all costs of water, sewer, natural gas, electricity, telephone, data and all other utility services Tenant desires to service the Premises and for all of Tenant's insurance required below. If Landlord chooses to have water, gas and/or electrical services separately metered to the Premises, Landlord shall, at its cost, pay for the installation of any such meters. If any items allocated above to Tenant are billed to Landlord, Tenant will pay such items directly to the providers or reimburse Landlord for such items, within 15 days following Landlord's written notice to Tenant.

10. **CARE OF THE PREMISES.**

A. Tenant shall keep and maintain the Premises in a neat and clean condition, subject to reasonable and normal wear and tear. Without limiting the foregoing, Tenant, at its expense, shall maintain, repair and replace all interior non-structural walls and doors, all floor, wall, window and ceiling coverings and treatments, all plumbing fixtures and distribution lines from the point of being stubbed into the Premises, HVAC fixtures and ductwork within the Premises, electrical lines and outlets and lighting fixtures located in the Premises and all light bulbs and ballasts. Tenant shall be responsible and pay for janitorial, office cleaning and interior window cleaning within the Premises, cleaning of windows on the exterior of the Premises in excess of the level provided by Landlord and for removal of all refuse Tenant generates at the Building. Tenant shall perform and pay for commercially reasonable preventative maintenance of any HVAC, electrical and other mechanical or utility systems and equipment serving the Premises.

B. Subject to Section 7 above, Landlord shall keep or cause to be kept the foundations, outer walls, roof, floors slabs, windows, exterior doors, downspouts, gutters, mechanical and electrical equipment and distribution systems (except those exclusively serving the Premises and any installed through Tenant's Work or Tenant's later changes or alterations) in good working order and repair, provided, however, subject to Section 16(C)

below, if the need for such repair is directly attributable to or results from the negligence or willful misconduct of Tenant or anyone claiming through Tenant, as opposed to normal wear and tear, then in such case, Tenant agrees to reimburse Landlord for all reasonable costs and expenses incurred by Landlord with respect to such maintenance or repair. Landlord shall commence repairs if it is required to do so hereunder as soon as reasonably practicable after receiving written notice from Tenant of the necessity of such repairs.

11. **INSURANCE.**

A. Landlord's Insurance. Landlord shall carry, or cause to be carried, insurance for fire and so-called "all-risk, extended coverage" for the Building, in the amount of the full replacement cost thereof, excluding any of Tenant's improvements, fixtures, furnishings, equipment and personal property.

B. Tenant's Insurance. During the Term, Tenant shall keep in full force and effect, at its expense, a policy or policies of insurance with companies licensed to do business in the state in which the Premises is located and reasonably acceptable to Landlord with the following coverages: (1) public liability and property damage insurance and automobile liability insurance with respect to the Premises and the business of Tenant, with a minimum coverage of \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate for this location; (2) if the nature of Tenant's operation is such as to place any or all of its employees under the coverage of Workers' Compensation or similar statutes, Tenant shall also keep in force, at its expense, Workers' Compensation or similar insurance affording statutory coverage and containing statutory limits; (3) Employers Liability Insurance with coverage of not less than \$1,000,000; (4) any other special insurance coverages associated with Tenant's use of the Premises and reasonably requested by Landlord; and (5) insurance for fire and extended coverage, insuring for the full replacement cost, Tenant's Work and Tenant's merchandise, improvements, trade and other fixtures, furnishings, equipment and all of Tenant's other personal property. Such policies, where applicable and to the maximum extent possible, shall name Landlord as an additional insured. Upon Landlord's written request, Tenant shall furnish Landlord with certificates evidencing any such insurance required of Tenant is in effect and, if available, stating that Landlord shall be notified in writing 10 days prior to cancellation, material change or nonrenewal of insurance.

12. **HAZARDOUS MATERIALS.** Tenant covenants and agrees that Tenant shall at all times be responsible and liable for, and be in complete and strict compliance with, all "Governmental" laws, ordinances, rules and regulations relating to environmental protection, environmental matters and industrial hygiene (as such terms are hereinafter defined) arising, directly or indirectly, out of the use of "Hazardous Materials" in, on, under or about the Property by Tenant, its agents, servants, employees, licensees, contractors, sub-Tenants and concessionaires. The term "Governmental" as used herein shall include, without limitation, federal, state, and local governments, and political subdivisions and regulatory agencies of federal, state, and local governments. The term "Hazardous Materials" as used herein shall include, without limitation, whether now or subsequently listed in any Governmental listing or publication defining hazardous materials, substances defined as: "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation

and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and any subsequent amendments thereto, or replacement statutes thereof or similar statutes thereto, and ordinances, rules, orders and regulations adopted and publications promulgated pursuant to any said laws. Tenant shall indemnify and hold Landlord harmless from and against any and all acts, injuries, damages, losses, claims, demands, losses, costs, expenses and the like, including without limitation, attorneys' fees and costs (collectively "Claims"), arising out of or in any way connected with the use, manufacture, storage, sale, release or disposal of Hazardous Materials or products containing Hazardous Materials by Tenant, its agents, servants, employees, licensees, contractors, subtenants or concessionaires in, on, under or about the Property during any period of its occupancy of the Premises, including prior to the Effective Date.

13. **DAMAGE OR DESTRUCTION.** If the Building is damaged by fire or other casualty to the extent that, in the reasonable determination of Landlord, the Premises is no longer suitable for Tenant's use and rebuilding or repairs cannot be completed within 270 days from the date of damage this Lease shall terminate at the option of Landlord exercisable by written notice to Tenant within 180 days after the damage, which termination shall be effective as of the date of damage. If the Building is damaged by fire or other casualty but to the extent that, in the reasonable determination of Landlord, repairs can be reasonably completed within 270 days from the date of damage, this Lease shall not terminate, and Landlord shall rebuild or repair such damage, restoring the improvements to substantially the same condition as existed prior to the event of damage, but Landlord shall have no obligation to replace or restore any Tenant's Work or any alterations, improvements, signage, trade fixtures or other personal property of Tenant, and Base Rent and Additional Rent shall be equitably abated until such repairs are completed.

Notwithstanding anything in this Lease to the contrary, Landlord shall not have any obligation to repair or restore the improvements, and this Lease shall terminate effective as of the date of the damage, if the proceeds of Landlord's insurance are insufficient to fully restore the Building to substantially the same condition as existed prior to the damage, if all owners of the Project elect not to rebuild the Project, if Landlord's lender(s) require the insurance proceeds to be applied to outstanding debt, if Landlord is unable to secure a building permit to restore the Building to substantially the same condition or if Landlord elects to redevelop the Building, or all owners of the Project elect to redevelop the Project, with improvements that are materially different than those existing on the Effective Date. If Landlord will not repair or restore the Premises pursuant to this paragraph, it shall provide Tenant written notice thereof not later than 180 days following the date of damage.

14. **CONDEMNATION.** If part of the Premises is taken for a public or quasi-public use or conveyed to a governmental entity in lieu thereof and in the reasonable determination of Landlord and Tenant a part remains that is suitable for Tenant's use, this Lease shall, as to the parts so taken, terminate on the date title shall vest in the governmental entity and Rent shall be equitably abated. If all of the Premises or a part thereof be taken or conveyed so that, in the reasonable determination of Landlord or Tenant, there does not remain a portion suitable for Tenant's use, this Lease shall terminate at the option of either party by written notice to the other within 30 following the date that title transfers. If neither party terminates this Lease, Landlord shall use its proceeds first to restore the Premises.

All compensation awarded or paid for any taking or conveyance, whether for the whole or a part of the Premises, shall be the property of Landlord, provided however, that Landlord shall not be entitled to any award separately made by the condemning authority to Tenant for the loss of value of leasehold improvements made or paid by Tenant, or for Tenant's fixtures, personal property, damages for interruption and discontinuance of Tenant's operations or the cost of relocating to other premises. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, compensation as may be separately awarded or recoverable by Tenant in Tenant's own right for such items.

15. **LANDLORD'S ACCESS.** Landlord may, during normal business hours and following reasonable advance notice, enter upon the Premises to inspect and to make changes, alterations or repairs to the Premises that Landlord is required or may desire or to show the Premises to prospective purchasers, tenants, lenders or any other parties; provided Landlord shall do so in a manner to cause the least interference with Tenant's business operations as is practicable under the circumstances. In emergency or exigent circumstances, Landlord will not be required to provide prior notice.

16. **COVENANTS TO HOLD HARMLESS.**

A. Subject to paragraph C below, Landlord hereby agrees to indemnify and hold Tenant harmless from any and all Claims related to persons, entities, real property and/or personal property that arise in and about the Property to the extent caused by the negligence or willful misconduct of Landlord, its agents or employees.

B. Subject to paragraph C below, Tenant hereby agrees to indemnify and hold Landlord harmless any and all Claims related to persons, entities, real property and/or personal property that arise in and about the Property to the extent caused by the negligence or willful misconduct of Tenant, its agents or employees.

C. Each party hereby waives any rights it may have against the other arising out of any Claim to the extent that such damage or loss is coverable by insurance required of it under this Lease. Landlord and Tenant, on behalf of their respective insurance companies, waive any right of subrogation they may have against each other where such waiver of subrogation is not invalidated by state law.

17. **NOTICES.** All communications, demands, notices, or objections permitted or required to be given or served under this Lease shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its duly authorized agent, or deposited in the United States Mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, or deposited with a nationally-recognized carrier, postage prepaid, and in any event addressed to the other party to this Lease at the address set forth at the opening paragraph of this Lease, or at such other address as either party may from time to time designate in writing.

18. **SURRENDER.** At the expiration or sooner termination of this Lease, Tenant shall surrender the Premises to Landlord in a neat and clean condition and in the condition required pursuant to other provisions of this Lease and otherwise in substantially the same condition existing as of the Rent Commencement Date, ordinary wear and tear excepted.

19. **ASSIGNMENT.** Tenant shall not, voluntarily or by operation of law, assign this Lease, nor sublet the Premises or any part thereof, without the prior written consent of the Landlord. Landlord may refuse to consent to any proposed assignment or sublease in its sole discretion. Consent to any assignment does not constitute a waiver of this provision of the requirement of seeking Landlord's consent for further assignments, nor shall any such consent release the assignor or sublessor from any obligations under this Lease. Notwithstanding anything herein to the contrary, Tenant may, with simultaneous notice to Landlord but without Landlord's consent, sublet a portion of the Premises to Interstate Parking Company of North Dakota LLC or any other entity who will occupy the Premises for a Permitted Use ("Subtenant"); provided, however: Tenant shall remain fully responsible to Landlord for all obligations under this Lease with respect to the full Premises and Tenant and Subtenant shall be jointly and severally responsible to Landlord for all obligations under this Lease to the extent of the Premises sublet to Subtenant; and Tenant shall provide a copy of this Lease to Subtenant and Subtenant shall be bound by all terms and conditions thereof with respect to the portion of the Premises occupied by it.

20. **SUBORDINATION/ESTOPPEL.** Landlord may subordinate this Lease to existing or future mortgages against the Premises. Tenant shall execute and deliver any instrument necessary to effectuate the subordination; however, each mortgagee shall agree that this Lease will remain in full force and effect as to Tenant upon foreclosure of any mortgage, provided Tenant shall not be in default under this Lease beyond applicable cure periods. Landlord and Tenant each agree that they will, at any time and from time to time, within 10 business days following written notice by the other party hereto specifying that it is given pursuant to this provision, execute, acknowledge and deliver a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), the dates to which Rent has been paid, stating whether or not, to the best of knowledge of the signer of such certificate, the other party is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge and others matters as are reasonably requested.

21. **QUIET POSSESSION.** Tenant, upon paying all Rent and performing the agreements of this Lease, shall peaceably and quietly have, hold and enjoy the Premises for the specified term.

22. **DEFAULT.**

A. Tenant shall be deemed in default of this Lease upon occurrence of any of the following:

(1) Any Rent remaining unpaid in whole or part for a period of 10 days or more after written notice from Landlord that such amount is past-due (except that in the instance of the second late payment of any amount in any 12 month period, no notice from Landlord to Tenant shall be required prior to such late payment constituting an event of default); or

(2) Tenant's violation or default, in any of the other covenants, agreements, stipulations, or conditions in this Lease, which violation or default shall continue for a period of 30 days after written notice from Landlord of such violation or default (provided Tenant shall have such additional reasonable time thereafter as may be necessary to cure such default where such default is of such a character or nature as to reasonably require more than 30 days to cure, so long as Tenant is diligently working to cure such default).

B. In the event of any default hereunder by Tenant, Landlord may do any one or more of the following:

(1) Cancel and terminate this Lease, as well as all of the right, title, and interest of Tenant hereunder by giving to Tenant not less than 10 written days' notice of the cancellation and termination. On expiration of the time fixed in this notice, this Lease and the right, title and interest of Tenant hereunder, shall terminate in the same manner and with the same force and effect, except as to Tenant's liability, as if the date fixed in the notice of cancellation and termination were the end of the Term.

(2) Make any payment required of Tenant herein or comply with any agreement, term, or condition required hereby to be performed by Tenant, and Landlord shall have the right to enter the Premises for the purpose of correcting or remedying any such default, and to remain until the default has been corrected or remedied, but any expenditure for the correction by Landlord shall not be deemed to waive or release the default of Tenant of the right of Landlord to take any action as may be otherwise permissible hereunder in the case of any default. Tenant shall pay Landlord, as additional rent and upon demand, Landlord's costs and expenses for remedying such default, plus 15% for overhead and supervision.

(3) Re-enter the Premises immediately and remove the property and personnel of Tenant, and store the property in a public warehouse or at a place selected by Landlord, at the expense of Tenant. Landlord may recover from Tenant all damages proximately resulting from the breach, including, but not limited to, the cost of recovering the Premises and storage of Tenant's property, and the balance of Base Rent and Additional Rent for the remainder of the Term, which sum shall be due Landlord as and when accrued or may be collected in one lump, discounted to present value at the rate of the "prime rate" then published by the Wall Street Journal or similar resource reasonably chosen by Landlord.

(4) After re-entry, Landlord may relet the Premises or any part thereof for any term without terminating the Lease, at the rent and on the terms as Landlord may choose. Landlord may make alterations and repairs to the Premises. Tenant shall be liable for all expenses of the reletting, for tenant improvements, alterations and repairs made, for any leasing commissions and for the difference between the rent received by Landlord under the new lease agreement (after deducting Landlord's costs of reletting the Premises, including without limitation, leasing commissions, brokerage fees, costs of repairs, improvements or modifications

made to the Premises, legal fees, and other costs incurred by Landlord in reletting the Premises) and the Rent due for the same period under this Lease. Landlord shall have the right, but shall not be required, to apply the rent received from reletting the Premises to (a) reduce the indebtedness of Tenant to Landlord under the Lease, not including indebtedness for Base Rent or Additional Rent, (b) expenses of the reletting, (c) Rent past due under this Lease, or (d) to payment of future Rent due under this Lease as it becomes due.

(5) In addition to all other rights and remedies of Landlord provided by law and under this Lease, following an event of default, Landlord shall have the right to recover from Tenant (or any one or more of them if there is more than one Tenant), Tenant's successors and assigns, and any co-obligor, surety or guarantor, or other party legally responsible for Tenant's obligations under this Lease, jointly and severally, all or any of the following: all Rent owing by Tenant to Landlord under this Lease prior to the effective date of termination or re-entry; damages subsequent to termination of the Lease equal all Rent reserved under this Lease, in one lump sum, discounted to present value at the rate of the "prime rate" then published by the Wall Street Journal or similar resource reasonably chosen by Landlord; and all direct and consequential damages, cost, expense, or loss suffered by Landlord as a proximate result of the breach by Tenant of any provision of this Lease for which Landlord is not otherwise fully compensated including, without limitation, portions of unamortized brokerage commissions, Landlord's Work and construction allowances paid to or on behalf of Tenant relating to the remainder of the Term; and/or interest on all Rents at the rate provided in this Lease.

23. **DEFAULT BY LANDLORD.** If Landlord shall default in the performance of any of Landlord's obligations hereunder, and such default shall not be cured within 30 days after receipt of written notice thereof from Tenant, then, subject to such further time as Landlord may have to remedy such default pursuant to Section 26 below, Tenant may bring an action against Landlord for specific performance of Landlord's obligations and/or direct damages to Tenant resulting from Landlord's default. If Tenant elects to cure the default, Tenant may bring an action against the Landlord to recover the cost of curing Landlord's default. In no event may Tenant withhold, or offset against, amounts it is obligated to pay Landlord under this Lease, and in no event shall Tenant be entitled to terminate this Lease.

24. **HOLDING OVER.** If Tenant shall continue to occupy the Premises after termination of this Lease, such occupancy shall create a tenancy at will only and shall not be a renewal of this Lease. Tenant shall pay Base Rent and Additional Rent for the Premises during any holding-over period at a rate equal to 150% of the rates in effect prior to such holding over.

25. **LATE PAYMENT FEE/INTEREST.** If any Rent is paid more than 10 days late, in addition to any other rights and remedies of Landlord, Tenant shall pay a late payment charge of 5% of the delinquent payment. All past-due sums, including any unpaid late payment charges, shall accrue interest at the rate of 18% per annum.

26. **EXCUSE FOR NON-PERFORMANCE.** Anything in this Lease to the contrary notwithstanding, if performance of any act or obligation is prevented or delayed by Act of God,

war, labor disputes, fire, windstorm, explosion, collapse of structure, riot, government regulation, delays by government bodies or any other cause or causes beyond the reasonable control of Landlord or Tenant (provided those causes relating to the financial status of Landlord or Tenant or general industry-specific economic conditions shall not be deemed beyond the reasonable control of a party), the time for the performance of the act or obligation will be extended for the period that such act or performance is delayed or prevented by any such cause. This provision shall not operate to excuse Tenant from prompt payment of Rent.

27. **ATTORNEYS FEES.** In addition to any other rights or remedies set forth in this Lease or otherwise available at law or in equity, in the event of any dispute for recovery of possession of the Premises, for the recovery of Rent or because of the breach of any other covenant herein contained on the part of either party to be kept or performed, and a default shall be established, the defaulting party shall pay to the non-defaulting party all expenses incurred by the non-defaulting party, including reasonable attorney's fees, costs of litigation, and costs of appeal.

28. **CUMULATIVE RIGHTS.** Except as expressly provided otherwise in this Lease, no right or remedy herein conferred upon or reserved to Landlord or Tenant in this Lease is intended to be exclusive of any other right or remedy herein provided or available at law or in equity, but each remedy in this Lease shall be cumulative with and in addition to every other right or remedy given herein or presently or hereafter existing at law or in equity. Notwithstanding anything in this Lease to the contrary, in the event of a Landlord default, Tenant's sole remedy shall be to sue for damages or specific performance; Tenant shall not be entitled to terminate this Lease except as otherwise expressly provided herein in those specific and particular circumstances where such remedy is available.

29. **AMENDMENT, MODIFICATION, OR WAIVER.** No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, by a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

30. **BINDING EFFECT.** This Lease is and shall be binding upon and shall insure to the benefit of the heirs, personal representatives, executors, successors and assigns of the parties hereto.

31. **ENTIRE AGREEMENT: DISCLAIMER OF WARRANTIES.** This Lease contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understanding between the parties with respect to such subject matter. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in the Lease, or unless mutually agreed to in writing between the parties hereto after the date hereof, and neither party has relied upon any verbal representations, agreements, or understanding not expressly set forth herein.

32. **CONTROLLING LAW.** This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises is located. The parties agree that all

legal actions initiated with respect to or arising from any provision contained in this Lease shall be initiated, filed and venued exclusively in the district court of the county in which the Premises is located, and shall not be removed therefrom to any other federal or state court.

33. **TIME OF THE ESSENCE.** Time is of the essence in all provisions of this Lease.

34. **RECORDING.** Neither this Lease nor any memorandum, short-form or other evidence of this Lease shall not be recorded, unless required of a party's lender, in which case the Term shall be clearly reflected.

[Remainder intentionally left blank. Signatures pages follow]

IN WITNESS WHEREOF, the parties have signed this Lease the day and year first written above.

LANDLORD:

TENANT:

GREAT PLAINS MERCANTILE
HOLDINGS, LLC

CITY OF FARGO, NORTH DAKOTA

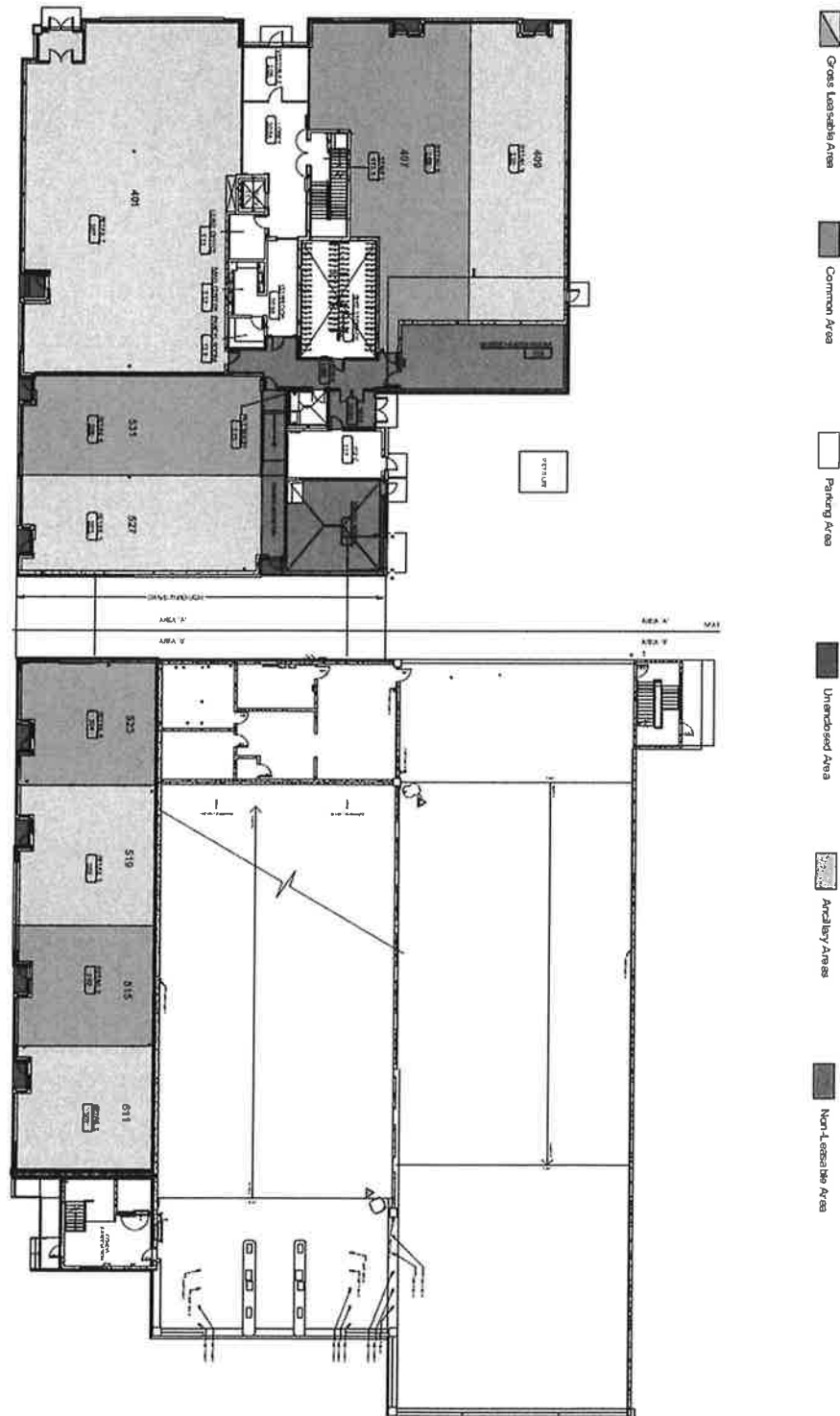
By: _____

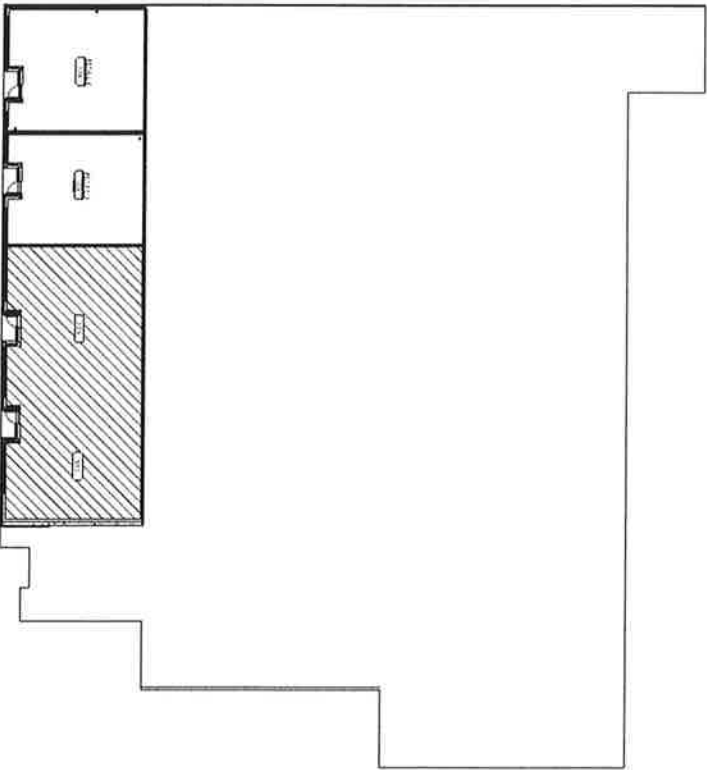
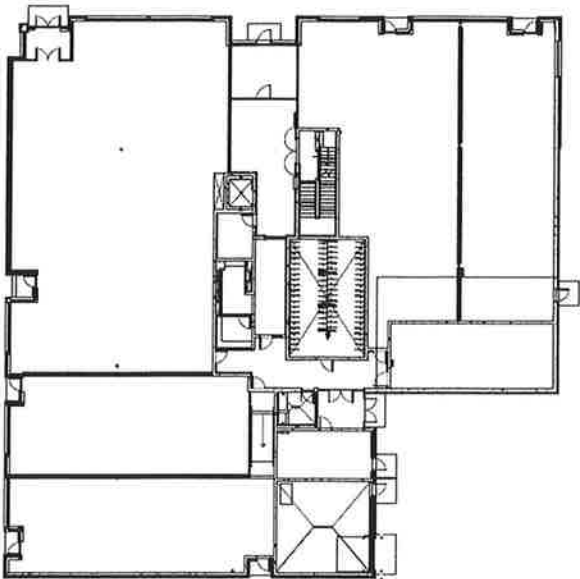
By: _____

Its: _____

Its: _____

EXHIBIT A
PROJECT, COMMERCIAL SPACE AND PREMISES





PROJECT
LEASED PREMISES SHOWN BELOW WITH ADDRESS OF 511 AND 515 3RD AVE N

EXHIBIT B
Vanilla Box Shell - Landlord's Work

Landlord, at its sole expense, shall construct and deliver the Premises with the following improvements to Tenant, which shall constitute Landlord's Work, as follows:

1. HEATING AND COOLING: 1 ton per 400 square feet and one zone regulating the Premises. Fresh air louver on exterior face of building. HVAC distribution within the Premises, including ceiling diffusers, shall be Tenant's Work.
2. PLUMBING: 1" cold water line and sewer stubbed to Premises.
3. FIRE SUPPRESSION: Building sprinkler system compliant with code assuming no additional interior walls with all heads provided and turned up.
4. FLOORS: Concrete floors with sewer stubbed into Premises.
5. WALLS: All perimeter walls to demise the Premises to be sheet rocked, taped and sanded and be ready to accept paint (paint or other wall coverings are Tenant's Work).
6. ELECTRICAL: 200-amp panel provided to the Premises; electrical outlets added to the Premises perimeter walls approximately one outlet per 40 linear feet.
7. TELECOMMUNICATIONS: Raceway or conduit from telephone/data room to Premises.
8. CEILING: Exposed structural steel I-beams sprayed with fireproofing. Exposed metal deck between structural members.
9. DOORS AND WINDOWS: Aluminum storefront system. Single entry door with hardware and lockset (2 sets of keys).
10. SIGNAGE: Common Area life safety signage and lighting. All other signage is Tenant's Work, but must be approved by Landlord.
11. UTILITIES: Separately metered water, electrical and natural gas.

Any other/additional work is Tenant's Work and will be the sole responsibility and cost of the Tenant (other than as may be eligible for reimbursement pursuant to the Allowance).

EXHIBIT C USE RESTRICTIONS

Even if otherwise a permitted use under the Lease, Tenants use and occupancy of the Premises shall be further restricted by the following, provided the following shall not be deemed to grant permitted uses beyond those expressly set forth in the Lease.

A. Tenant shall use the Premises only for those "permitted uses" under the City of Fargo General Office, Limited Commercial and General Commercial zoning classifications, as such classifications exist as of the Effective Date, without regard to conditional uses (the "Zoning Standard"). Only such uses, structures, signs and other improvements that are permitted under the Zoning Standard, without regard to variances and otherwise permitted herein or in the Lease, shall be permitted.

B. No portion of the Premises may be used or occupied for: any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, or noise or sound that is a public or private nuisance in violation of applicable law, regulation, ordinance orders and the like.

C. The Premises shall not be used or occupied as an adult book store or a business enterprise selling or exhibiting pornographic materials. As used herein, "an adult book store or a business enterprise selling or exhibiting pornographic materials" shall include, without limitation, a business which, in whole or in any part, offers for sale or exhibition books, magazines or other publications containing any combination or photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a business, in whole or in any part, offering for exhibition, sale or rental video disks or other medium capable of projecting, transmitting or reproducing independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated "X" by the Motion Picture Rating Association, or any successor thereto, or a business, in whole or in part, conducting live display, contests or performances involving nude or semi-nude persons.

D.

EXHIBIT D
VERIFICATION OF TERM - FLOOR AREA

This form is completed by the parties hereto pursuant to the Lease dated as of December 15, 2021, between GREAT PLAINS MERCANTILE HOLDINGS, LLC and CITY OF FARGO, NORTH DAKOTA (the "Lease"). Capitalized terms used, but not separately defined herein, shall be given the meaning ascribed to them in the Lease.

The Rent Commencement Date is _____, 2022.

Tenant reacknowledges and affirms that it has examined the Premises in full and has accepted same, Landlord has fully performed Landlord's Work and the Premises and Project are in the condition required under the terms of the Lease between the parties, Landlord is not presently in default in any respect under the Lease and that Tenant waives all claims against Landlord concerning the condition of the Premises and the personal property, if any, transferred by Landlord in connection with the Lease, and in accordance with its terms.

This Exhibit D is attached to and constitutes a part of the above-described Lease.

LANDLORD:

TENANT:

GREAT PLAINS MERCANTILE
HOLDINGS, LLC

CITY OF FARGO, NORTH DAKOTA

By: _____

By: _____

Its: _____

Its: _____



Kilbourne Group
210 Broadway, Suite 300
Fargo, ND 58102
p: (701) 237-2279
e: info@kilbournegroup.com
www.kilbournegroup.com

January 21, 2021

Jim Gilmour
City of Fargo
225 4th St North
Fargo, ND 58102

Re: Scope of Services – 511 & 515 4th Ave N Build Out

Dear Mr. Gilmour,

Thank you for allowing Kilbourne Group this opportunity to provide a scope of services proposal, providing project management services for a build-to-suit project at 511 and 515 4th Ave N, Fargo, N 58102. We value our past project partnership with the City and look forward to continuing that partnership in this project.

Within this document you will find a general outline of services provided by Kilbourne Group and an associated fee structure for that scope of work. Our intent is to provide a single sourced, turn-key project management solution for the City, thereby streamlining the project and the efficiency to completion.

Kilbourne Group Scope of Services – Project Management, Construction Management

- Project Management General Services

1. Solicit, vet, procure, and contract Design Team necessary to complete project needs. Scope of design to be discussed and agreed to between Kilbourne Group and City of Fargo. Kilbourne Group to hold design contract(s).
2. Solicit, vet, procure, and contract Construction Management services necessary for preconstruction and construction services. Kilbourne Group to hold construction contract(s). We anticipate using KCM for this scope of work.
3. Coordinate design and construction services with City provided project services. Kilbourne Group is anticipating that furniture design and procurement, IT or specialty security services, or other similar services, will be provided by the City. Kilbourne Group will coordinate scheduling and design to accommodate these needs.
4. Present, inform, and maintain overall project budget. Kilbourne Group will work with City of Fargo to establish the original project budget and maintain it through design, material sections, or value engineering processes as necessary.



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e: info@kilbournegroup.com
www.kilbournegroup.com

5. Establish and maintain overall project schedule. Kilbourne Group will provide mater scheduling services for the overall project, providing regular updates to the City of Fargo.
 6. Coordinate meetings between primary project stake holders. Kilbourne Group will proactively plan and coordinate stakeholder meetings for design consideration/input, budget review, and schedule review throughout the course of the project.
- Project Design and Construction Phase Management Services
 1. Pre-Construction/Pre-Design
 - Construction Contract Management engagement
 - Establish schedule and manage with CM
 - Establish budget and manage with CM
 - Document organization/review/approvals
 - Identify budgets/budget adjustments
 - Coordinate site access and construction logistics with landlord
 - Specification Review
 - Communication with Owner
 2. Design Phase
 - Coordination of A/E team in Schematic Design, Design Development and Construction Documents phases
 - Design document review and recommendations for approval as required
 - Value engineering as needed to manage budget
 - Evaluation of Alternates and Substitutions
 - Evaluation of bids and project budget
 3. Construction Phase
 - Payment schedule approvals/Draw submission review/management
 - Bidding, buyout and contracting of project subcontractors
 - Schedule, Quality, and Change Order management
 - Owner purchased equipment coordination
 - Regular progress reporting (minimum monthly)
 - Project observations
 4. Post Construction
 - Closeout Documentation Coordination and Review
 - Coordination of building operations and handoff to landlord
 - Project Budget and Billing Management
 1. Establish Original project Budget and budget controls for approval by City of Fargo. Budget to include the following breakouts.
 - Design Team Costs
 - Construction Costs
 - Construction Contingency



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- Construction Fee
 - Owner Provided furniture and equipment
 - Owner provided consulting fees (IT, Security, etc. if needed)
 - Legal Fees
 - KG Management Fee
 - Owner Contingency
 - Total Project Costs
2. Manage pay-app process and prepare monthly billings for City of Fargo sign-off and funding
 - Billing to include design, construction, and management services in one pay app
 3. Manage construction budget and change order process for timely updates and coordination of project related issues

Kilbourne Group Scope of Services – Services Fee Structure

- Kilbourne Group Project Management Services – T&M billable up to \$15,000
 1. PM Billable Project Manager Rate: \$85/hr
 2. Sr. PM Billable Project Manager Rate: \$105/hr
 3. Standard reimbursable expenses billed at cost – printing, mileage, material samples, etc.
- Kilbourne Construction Management Services – Construction Cost + 5% Fee
 1. Cost of work plus 5% fee contract – contracted to Kilbourne Group
 2. Contract Cost to include KCM team time and recommended 5% construction contingency.
 - Open Book review of all subcontracts, POs and general conditions
 - Billable team time determined by actual team time spent on project: PM \$80/hr, Superintendent \$80/hr

Thank you for this opportunity.

Keith Leier
Vice President – Kilbourne Group

Approval:

Signature: _____

Print: _____

Date: _____



Kilbourne Group
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Fargo, ND 58102
p: (701) 237-2279
e: info@kilbournegroup.com
www.kilbournegroup.com

Standard Terms and Conditions

Article 1 Termination

A. Either Client or Kilbourne Group may terminate this Agreement upon seven days written notice.

B. If terminated, Client agrees to pay Kilbourne Group for all Basic, Consultants and Additional Services rendered and Reimbursable Expenses incurred up to the date of termination.

C. Upon not less than seven days' written notice, Kilbourne Group may suspend the performance of its services if Client fails to pay Kilbourne Group in full for services rendered or expenses incurred. Kilbourne Group shall have no liability because of such suspension of services or termination due to Client's nonpayment.

Article 2 Dispute Resolution

A. Client and Kilbourne Group agree to mediate claims or disputes arising out of or relating to this Agreement before initiating litigation. The mediation shall be conducted by a mediation service acceptable to the parties. A party shall make a demand for mediation within a reasonable time after a claim or dispute arises, and the parties agree to mediate in good faith. In no event shall any demand for mediation be made after such claim or dispute would be barred by applicable law. Mediation fees shall be shared equally.

Article 3 Use and Ownership of Kilbourne Group's Documents

A. Upon the parties signing this Agreement, Kilbourne Group grants Client a nonexclusive license to use Kilbourne Group's documents as described in this Agreement, provided Client performs in accordance with the terms of this Agreement. No other license is implied or granted under this Agreement. All instruments of professional service prepared by Kilbourne Group, including but not limited to, budgets, contracts, drawings and specifications, are the property of Kilbourne Group. These documents shall not be reused on other projects without Kilbourne Group's written permission. Kilbourne Group retains all rights, including copyrights, in its documents. Client or others cannot use Kilbourne Group's documents to complete this Project with others unless Kilbourne Group is found to have materially breached this Agreement.

Article 4 Miscellaneous Provisions.

A. This Agreement is governed by the law of Kilbourne Group's principal place of business.

B. This Agreement is the entire and integrated agreement between Client and Kilbourne Group and supersedes all prior negotiations, statements or agreements, either written or oral. The parties may amend this Agreement only by a written instrument signed by both Client and Kilbourne Group.



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C. In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.

D. Neither Client nor Kilbourne Group shall assign this Agreement without the written consent of the other.

E. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' and expert witnesses' fees, which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

F. Client and Kilbourne Group waive consequential damages for any claims, disputes or other matters in question arising out of or relating to this Agreement. Landscape Architect's waiver of consequential damages, however, is contingent upon the Client requiring contractor and its subcontractors to waive all consequential damages against Landscape Architect for claims, disputes or other matters in question arising out of or relating to the Project.

G. Nothing in this Agreement shall create a contractual relationship for the benefit of any third party.



January 7, 2022

RE: Fargo PD / Interstate Parking Fit-Up

Heather McCord
Kilbourne Group
210 Broadway, Suite 300,
Fargo, ND 58102
p. 701.205.7909 | heather@kilbournegroup.com

PROPOSAL FOR PROFESSIONAL SERVICES

Heather,

Thank you for the opportunity to submit this proposal for the architectural design services of the Fargo Police Department Sub-station / Interstate Parking fit-up space. This proposal will form the basis of professional fee services for the above referenced project. We appreciate your interest and consideration of the Craftwell Architecture + Construction team.

PROJECT UNDERSTANDING

The proposed office fit-up to be located within the newly constructed Mercantile Mixed-Use Wrap shell project. The project will include approximately 2,200 s.f. of office space for (2) tenants, which are the Fargo Police Department Sub-station and Interstate Parking. A target construction cost to be approximately \$100.00 / s.f. Certificate of Occupancy for shell project anticipated for April 1, 2022, with this project to be completed following shell completion and CO. Coordination will be required with the Police Departments IT/Security along with the existing electrical infrastructure. KCM Construction will be the builder. M/E Contractors will be Custom Aire and Magnum Electric.

SCOPE OF SERVICES

Architectural services will include the review and validation of previous conceptual studies, design and coordination from schematic design through construction documents, shop drawing review, and construction administration services. The architectural scope will include the planning for office space within existing building shell and materials selections. The architectural team will lead the coordination and review of consultant deliverables and engineered drawings. Review and coordination with the City of Fargo and City of Fargo Police Department will take place as required. Architectural drawings and specifications will be produced for bidding, permitting, and construction.

Please note: site surveys, geotechnical services, FFE, permitting/ plan review fees, mileage/ travel expenses, construction management, specialty consultants, and printing are outside of the scope of this proposal.

COMPENSATION

Compensation shall be based on a fixed fee and as outlined below. Changes in scope, project complexity, design schedule, and owner-directed changes following completion of the Construction Documents phase may be subject to additional compensation at the prevailing hourly rate or at a fixed fee which shall be negotiated at that time.

Design Team Fees:

Architectural Design Services:	\$15,600.00
o Excludes basic engineering fees	
o Fee breakdown	
▪ Schematic Design (10-15%)	
▪ Design Documents (20%)	
▪ Construction Documents/ Specifications (40%)	
▪ Bidding and Negotiation (5%)	
o Project Team Billable Rates	
▪ One Hundred Sixty Dollars (\$160.00), Principal Architect Rate	
▪ One Hundred Forty Dollars (\$140.00), Project Architect Rate	
▪ One Hundred Thirty Dollars (\$130.00), Construction Manager/Project Manager Rate	
▪ Ninety Dollars (\$90.00), Intern Level III/Superintendent Rate	
▪ Eighty Dollars (\$80.00), Intern Level II Rate	
▪ Seventy Dollars (\$70.00), Intern Level I Rate	
▪ Fifty Dollars (\$50.00), Administrative Staff Rate	

Consulting Design Service Fees

• MBN Mechanical and Electrical Engineering Lump Sum Fee:	\$9,000.00
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Total Fee Proposed:	\$24,600.00
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ADDITIONAL SERVICES

Additional services outside of the defined project scope will be performed on a time and material basis as required and agreed upon. These may include, but are not limited to, project branding / marketing, additional renderings, animations, and as-built drawings.

We appreciate this opportunity and look forward to working with you. Please feel free to call with any questions.

Sincerely,



Chris Hawley, AIA

Principal

Craftwell Architecture + Construction

ch@wecraftwell.com | 701.478.4600



5

AUDITOR'S OFFICE

Fargo City Hall
225 4th Street North
PO Box 2471

Fargo, ND 58108

Phone: 701.241.8108 | Fax: 701.241.8184

www.FargoND.gov

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Extension – Hennessey's

DATE: February 2, 2022

The Auditor's office received a request to grant an extension of the requirements of 25-1512 from Irish Hospitality d/b/a Hennessey's Irish Pub until August 22, 2022.

The City Commission granted Hennessey's an extension on March 8, 2021 running until September 20, 2021 and an additional extension to February 22, 2022. Hennessey's has made substantial progress towards reopening in a new location and has a lease agreement in place; however, there is still a long way to go. At this time, Hennessey's is requesting an additional 6-month extension to August 22, 2022.

Please see the attached letter from the legal representative.

Please approve an extension of 25-1512 for Irish Hospitality d/b/a Hennessey's Irish Pub until August 22, 2022.

Recommended Motion:

Move an extension of the requirements of 25-1512 to Hennessey's Irish Pub until August 22, 2022.

William P. Harrie*
Mark R. Hanson* •
Douglas W. Giger*
Andrew L.B. Noah
Jacqueline S. Anderson*



*Thaddeus E. Swanson
*Cloe A. Kilwein
*Anthony J.R. Anderson
John C. Oelke

Gregory B. Selbo, Retired

*Also Licensed in Minnesota
• Also Licensed in South Dakota

February 1, 2022

VIA E-MAIL
SSprague@FargoND.gov

Steve Sprague
City Auditor
225 N. 4th St.
Fargo, ND 58102

Re: Hennessy's License
Class A Liquor License A-9
Our File No. 14010.001

Dear Steve:

I represent Irish Hospitality, LLC, the holder of the Class A liquor license No. A-9 issued by the City of Fargo to Irish Hospitality, LLC d/b/a Hennessy's Irish Pub ("Irish Hospitality").

During its August 23, 2021, Regular Meeting, the Board of City Commissioners of the City of Fargo ("City Commission") granted Irish Hospitality's request to have the License extended for six months, until February 21, 2022. See City Commission Minutes at <https://fargond.gov/city-government/departments/city-commission/agendas-minutes/2021-minutes-video-archive/august-23-2021-minutes>.

Since the August 23, 2021, City Commission meeting, Irish Hospitality continues to make progress with regards to transferring License No. A-9, including the following:

1. The bar where Irish Hospitality plans to transfer License A-9 is part of a redevelopment project located in the area of 32nd Ave. S. and I-29, Fargo, N.D.
2. Irish Hospitality will be leasing its space and will be one of a number of businesses in the development. Irish Hospitality, therefore, has limited control as to when its space will be ready for occupancy.
3. Even so, Irish Hospitality has signed the lease for its space with the owner/landlord. Plans for the fit-up of the space for Irish Hospitality are being reviewed and revised.

February 1, 2022

Page 2 of 2

4. While construction supply demands and other issues caused by the continued Covid-19 pandemic makes it difficult to predict when a development and construction project will be completed, Irish Hospitality is pushing the owner/landlord toward completion. It appears, however, that it might be a minimum of 9 months before Irish Hospitality is able to occupy the space.

Irish Hospitality, therefore, respectfully requests that Class A license No. A-9 be extended an additional 6 months to allow sufficient time for Irish Hospitality to finalize the space for use of the License, and/or to provide the City Commission an update on the status of the development, including Irish Hospitality's anticipated occupancy date. The request is for a 6-month extension until the August 22, 2022, City Commission meeting.

Thank you for your time and attention to this matter.

Sincerely,



Mark R. Hanson
mhanson@nilleslaw.com

/mrh

Cc: Client [Via email only]



AUDITOR'S OFFICE

Fargo City Hall
225 4th Street North
PO Box 2471

Fargo, ND 58108

Phone: 701.241.8108 | Fax: 701.241.8184

www.FargoND.gov

February 1, 2022

To: Board of City Commissioners

From: Steven Sprague, City Auditor

Re: Sickies

The above named licensee has been provided a notice by the City Auditor's office of a liquor license compliance violation under section 25-1509 of the Fargo Municipal Code. The Liquor Control Board meet on January 20, 2022 at 2:00 p.m. in the City Commission Chambers of City Hall, 225 4th Street North, Fargo ND to consider the violation.

The Liquor Control Board concurred with the Police Department and Auditor's office and recommended following the established penalty matrix. This is a first compliance check failure, the penalty is \$500. The licensee agreed with the findings and has chosen not to appeal the finding.

Recommended Motion

Agree with the findings of staff and the Liquor Control Board and apply the penalty matrix (\$500 fine, first failure) to the liquor license violations identified at Sickies.

February 2, 2022

Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

**Re: Memorandum of Offer to Landowner
Temporary Easement - Project #FM-19-C**

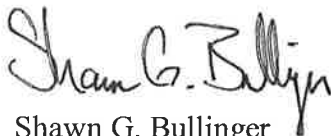
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a temporary easement in association with Project #FM-19-C. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a temporary easement from **Jonathon K. and Sadie M. Erickson** in association with Project #FM-19-C and that the Mayor is instructed to execute the Memorandum of Offer to Landowner on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris
Nathan Boerboom

Project FM-19-C	County Cass	Parcel(s) 01-4060-00610-000
Landowner Jonathon K & Sadie M Erickson		
Mailing Address 161 South Woodcrest Drive N Fargo, ND 58102		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

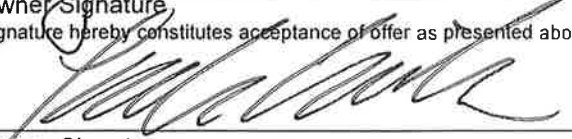
See enclosed easement.

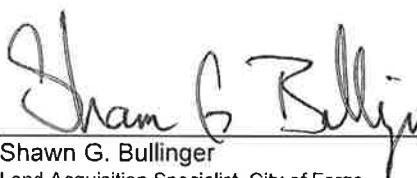
I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 2,891.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	
Easement and Access Control	\$	2,891.00
Improvements on Right of Way*	\$	
Damages to Remainder	\$	
Total Offer	\$	2,891.00

*Description of Damages to Remainder are as follows:


Owner Signature
Signature hereby constitutes acceptance of offer as presented above.


Owner Signature
Signature hereby constitutes acceptance of offer as presented above.


Shawn G. Bullinger
Land Acquisition Specialist, City of Fargo

Fargo City Commission has considered the offer and approves the same:

Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that JONATHON K. ERICKSON AND SADIE M. ERICKSON, whether one or more, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of levee and storm sewer construction and activities appurtenant thereto, said land being more fully described, to-wit:

That part of Lot 14, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the most westerly corner of said Lot 14; thence South 46°54'19" East, along the southwesterly line of said Lot 14, for a distance of 22.51 feet to the true point of beginning; thence North 51°56'48" East for a distance of 33.15 feet; thence North 85°03'46" East for a distance of 32.16 feet; thence South 65°52'30" East for a distance of 30.03 feet to a point of intersection with the southeasterly line of said Lot 14; thence South 42°03'45" West, along the southeasterly line of said Lot 14, for a distance of 66.44 feet to the most southerly corner of said Lot 14; thence North 46°54'19" West, along the southwesterly line of said Lot 14, for a distance of 56.21 feet to the true point of beginning.

Said tract contains 2,833 square feet, more or less.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

Grantor, his successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, his successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.


This easement shall terminate on June 30, 2023.

(Signatures on following pages).

IN WITNESS WHEREOF, Grantor set his/her hand and caused this instrument to be executed this 2 day of FEB., 2021.

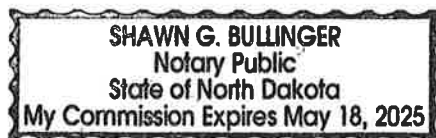
GRANTOR:

Jonathan K. Erickson

Jonathon K. Erickson

Sadie M. Erickson

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this 2 day of FEB., 2021, before me, a notary public in and for said county and state, personally appeared Jonathon K. Erickson and Sadie M. Erickson, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.



(SEAL)


Notary Public
Cass County, North Dakota

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this ____ day of _____, 2021.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steven Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

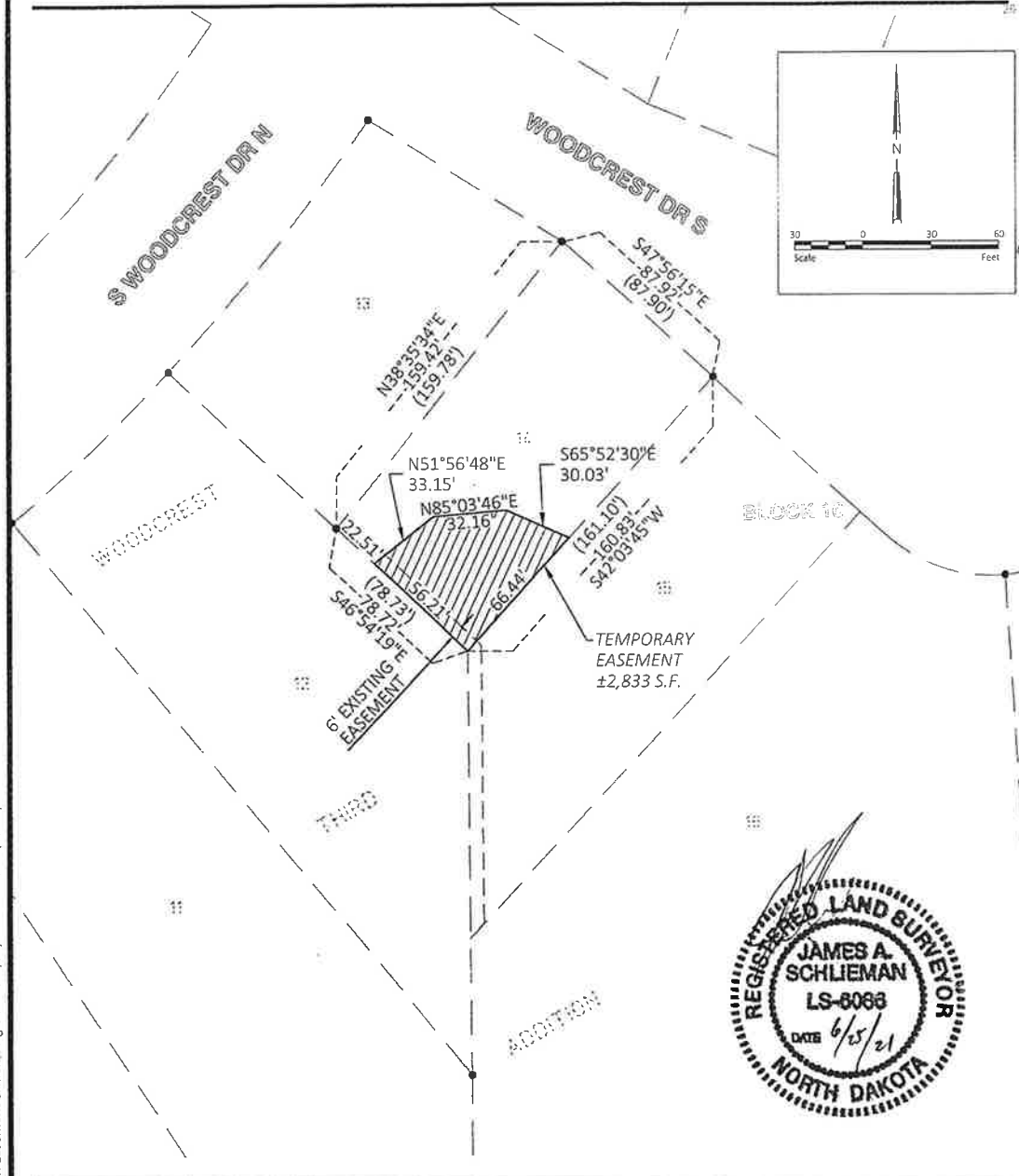
(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
James A. Schlieman
Registered Land Surveyor
LS-6086
Houston Engineering Inc.
1401 21st Ave. N.
Fargo, ND 58102
(701) 237-5065

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

PART OF LOT 14, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



IRON MONUMENT FOUND
MEASURED BEARING
MEASURED DISTANCE
PLAT BEARING
PLAT DISTANCE
PERMANENT EASEMENT
TEMPORARY EASEMENT

S59°27'46"E
105.00'
(N57°00'00"W)
(105.00')

NOTE: ALL BEARINGS GIVEN ARE
BASED ON THE CITY OF
FARGO GIS COORDINATE
SYSTEM.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
1 OF 2

H:\JBN\6000\6059\6059_0165\CAD\Easements\Lot 14 Erickson Easement Exhibit.dwg-Sheet 1-6/25/2021 7:58 AM-(tkarell)



January 27, 2022

Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

**Re: Memorandum of Offer to Landowner
Permanent & Temporary Easement - Project #FM-19-C**

Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a permanent & temporary easement in association with Project #FM-19-C. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a permanent & temporary easement from **Jessica L. and Darrell R. Johnson** in association with Project #FM-19-C and that the Mayor is instructed to execute the Memorandum of Offer to Landowner on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris
Nathan Boerboom

MEMORANDUM OF OFFER TO LANDOWNER
Page 59
City of Fargo, Engineering Department

Project FM-19-C	County Cass	Parcel(s) 01-4060-00540-000
Landowner Jessica L & Darrell R Johnson		
Mailing Address 119 South Woodcrest Drive N		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See enclosed easement(s).

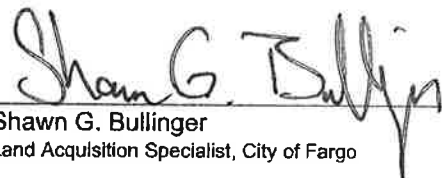
I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 70,124.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	
Easement and Access Control	\$	70,124.00
Improvements on Right of Way*	\$	
Damages to Remainder	\$	
Total Offer	\$	70,124.00

*Description of Damages to Remainder are as follows:


Owner Signature
Signature hereby constitutes acceptance of offer as presented above.


Owner Signature
Signature hereby constitutes acceptance of offer as presented above.


Shawn G. Bullinger
Land Acquisition Specialist, City of Fargo

Fargo City Commission has considered the offer and approves the same:

Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

PERMANENT EASEMENT
(Levee and Retaining Wall for Flood Control)

KNOW ALL MEN BY THESE PRESENTS that **DARRELL R. JOHNSON AND JESSICA L. JOHNSON**, hereinafter referred to as "Grantor", whether one or more, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid, the receipt whereof is hereby acknowledged, **HEREBY GRANT UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, under, upon and in the land hereafter described for the purpose of constructing and maintaining an earthen dike and retaining wall, together with any and all other appurtenant structures or devices, said tracts of land being more particularly described as follows:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence South 28°52'05" East, along the westerly line of said Lot 7, for a distance of 57.58 feet; thence South 72°51'08" East for a distance of 56.70 feet; thence North 63°11'31" East for a distance of 67.76 feet to a point of intersection with the easterly line of said Lot 7; thence North 33°16'40" West, along the easterly line of said Lot 7, for a distance of 103.40 feet to the true point of beginning.

Said tract contains 9,536 square feet, more or less.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may, at any and all times when necessary or convenient to do so, go over and upon said above-described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further understands and agrees that they will not disturb, injure, molest or in any manner interfere with said earthen dike or retaining wall as constructed and the customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises. Grantor, its successors and assigns, further expressly warrants and states that no buildings, trees, shrubs, sprinkler systems or other obstacles of any kind shall be placed or located upon the tract in any manner which may interfere with said earthen dike or retaining wall.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 24th day of November, 2021.

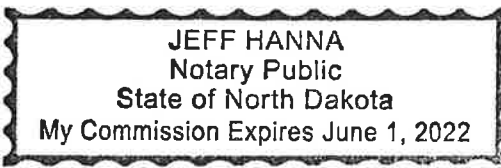
GRANTORS:



Darrell R. Johnson


Jessica L. Johnson

STATE OF North Dakota)
COUNTY OF Cass) ss.
)

On this 24th day of November, 2021, before me, a notary public in and for said county and state, personally appeared Darrell R. Johnson and Jessica L. Johnson to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.

(SEAL) 
JEFF HANNA
Notary Public
State of North Dakota
My Commission Expires June 1, 2022


Notary Public
Cass County, North Dakota

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this day of _____, 2021.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

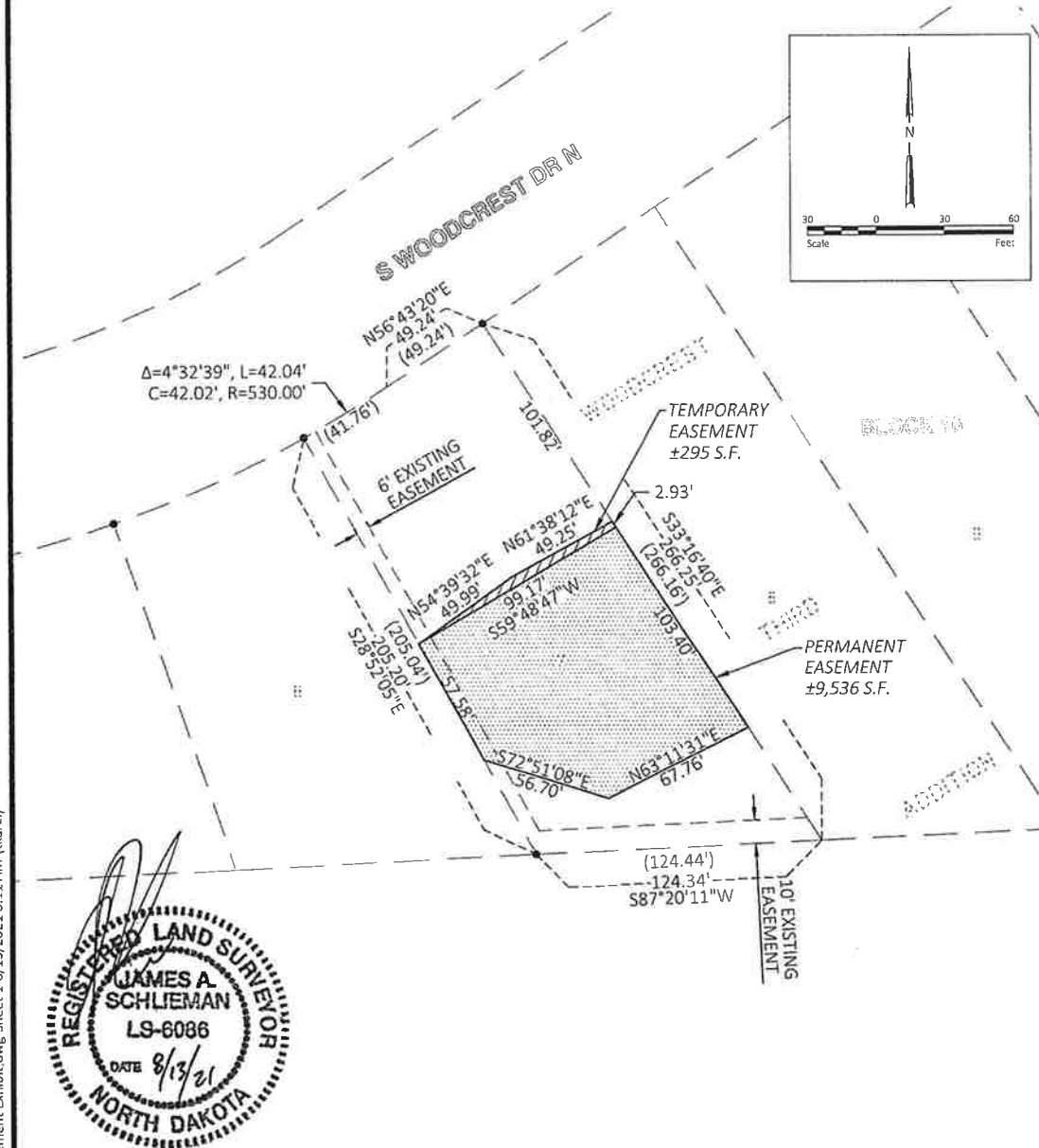
(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
James A. Schlieman
Registered Land Surveyor
LS-6086
Houston Engineering Inc.
1401 21st Ave. N.
Fargo, ND 58102
(701) 237-5065

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmmorris@lawfargo.com

PART OF LOT 7, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



IRON MONUMENT FOUND
MEASURED BEARING S59°27'46\"E
MEASURED DISTANCE 105.00'
PLAT BEARING (N57°00'00\"W)
PLAT DISTANCE (105.00')
PERMANENT EASEMENT
TEMPORARY EASEMENT

NOTE: ALL BEARINGS GIVEN ARE
BASED ON THE CITY OF
FARGO GIS COORDINATE
SYSTEM.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
1 OF 2

H:\JBM\60001\6059\0165\CAD\Easements\Lot 7 Johnson Easement Exhibit.dwg-Sheet 1-8/13/2021 8:11 AM-(Karel)

PART OF LOT 7, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

Description - Permanent Easement:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence South 28°52'05" East, along the westerly line of said Lot 7, for a distance of 57.58 feet; thence South 72°51'08" East for a distance of 56.70 feet; thence North 63°11'31" East for a distance of 67.76 feet to a point of intersection with the easterly line of said Lot 7; thence North 33°16'40" West, along the easterly line of said Lot 7, for a distance of 103.40 feet to the true point of beginning.

Said tract contains 9,536 square feet, more or less.

Description - Temporary Easement:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence North 54°39'32" East for a distance of 49.99 feet; thence North 61°38'12" East for a distance of 49.25 feet to a point of intersection with the easterly line of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 2.93 feet to the true point of beginning.

Said tract contains 295 square feet, more or less.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
2 OF 2

H:\JBN\6000\6059\6059_0165\CAD\Easements\Lot 7 Johnson Easement Exhibit.dwg-Sheet 2-8/13/2021 8:11 AM-(karel)

PERMANENT EASEMENT
(Storm Sewer)

KNOW ALL MEN BY THESE PRESENTS that **DARRELL R. JOHNSON AND JESSICA L. JOHNSON**, hereinafter referred to as "Grantors", whether one or more, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a storm sewer, together with the customary appurtenances, said tract being more particularly described as follows:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence South 28°52'05" East, along the westerly line of said Lot 7, for a distance of 57.58 feet; thence South 72°51'08" East for a distance of 56.70 feet; thence North 63°11'31" East for a distance of 67.76 feet to a point of intersection with the easterly line of said Lot 7; thence North 33°16'40" West, along the easterly line of said Lot 7, for a distance of 103.40 feet to the true point of beginning.

Said tract contains 9,536 square feet, more or less.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

Grantor, its successors and assigns, hereby covenant to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

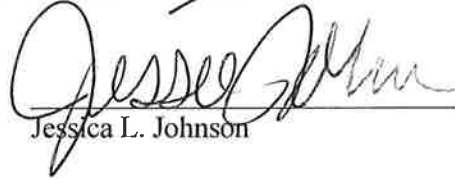
Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said storm sewer and customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said storm sewer including customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said storm sewer and customary appurtenances was begun.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 24th day of November, 2021.

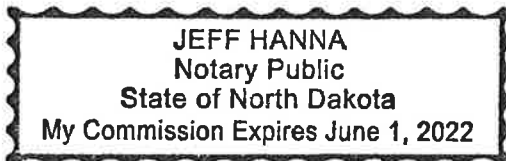
GRANTORS:


Darrell R. Johnson



Jessica L. Johnson

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this 24th day of November, 2021, before me, a notary public in and for said county and state, personally appeared Darrell R. Johnson and Jessica L. Johnson to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.



(SEAL)


Notary Public
Cass County, North Dakota

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this ____ day of _____, 2021.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

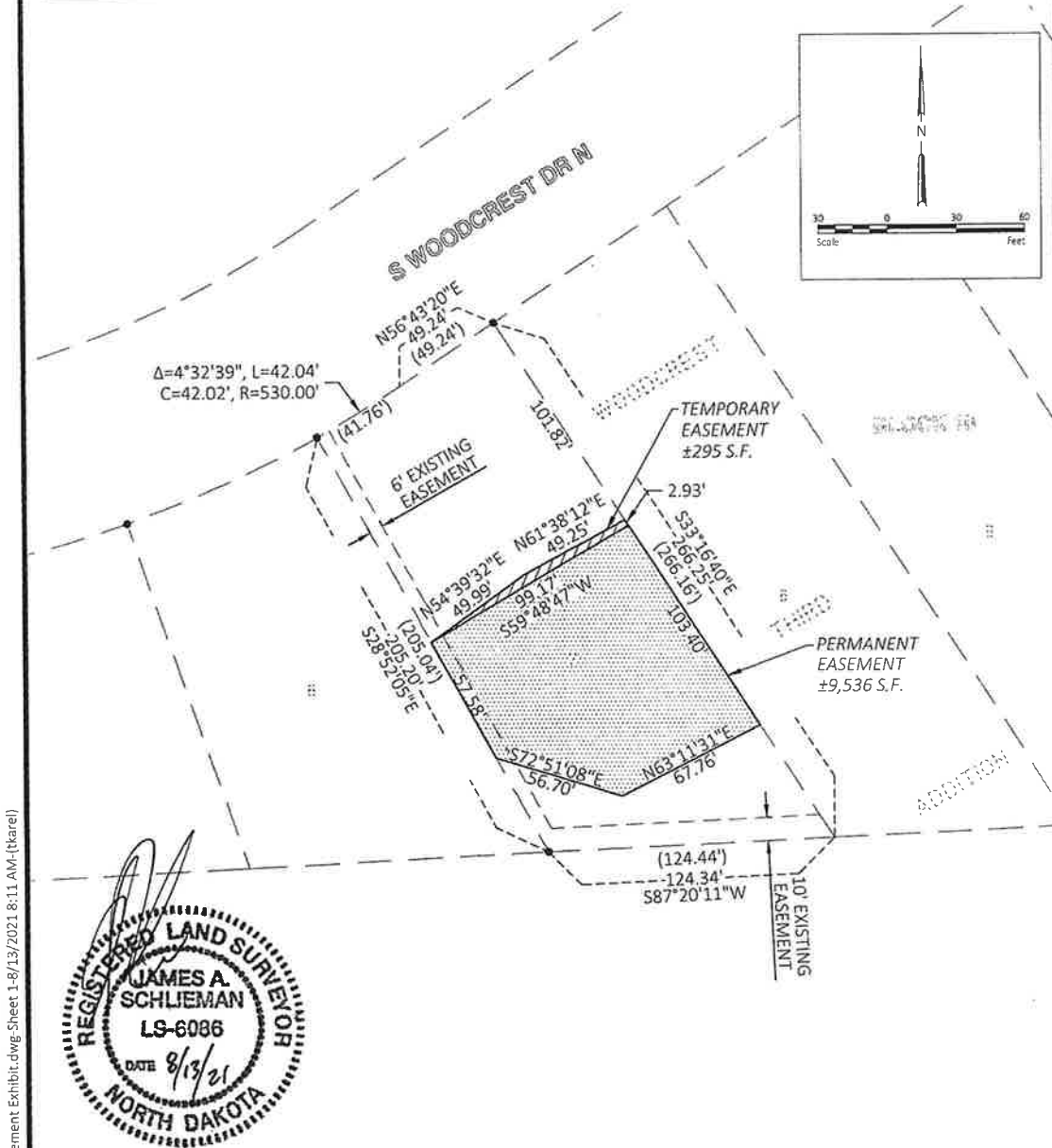
(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
James A. Schlieman
Registered Land Surveyor
LS-6086
Houston Engineering Inc.
1401 21st Ave. N.
Fargo, ND 58102
(701) 237-5065

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

PART OF LOT 7, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



IRON MONUMENT FOUND
MEASURED BEARING
MEASURED DISTANCE
PLAT BEARING
PLAT DISTANCE
PERMANENT EASEMENT
TEMPORARY EASEMENT

S59°27'46\"E
105.00'
(N57°00'00\"W)
(105.00')

NOTE: ALL BEARINGS GIVEN ARE
BASED ON THE CITY OF
FARGO GIS COORDINATE
SYSTEM.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
1 OF 2

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PART OF LOT 7, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

Description - Permanent Easement:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence South 28°52'05" East, along the westerly line of said Lot 7, for a distance of 57.58 feet; thence South 72°51'08" East for a distance of 56.70 feet; thence North 63°11'31" East for a distance of 67.76 feet to a point of intersection with the easterly line of said Lot 7; thence North 33°16'40" West, along the easterly line of said Lot 7, for a distance of 103.40 feet to the true point of beginning.

Said tract contains 9,536 square feet, more or less.

Description - Temporary Easement:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence North 54°39'32" East for a distance of 49.99 feet; thence North 61°38'12" East for a distance of 49.25 feet to a point of intersection with the easterly line of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 2.93 feet to the true point of beginning.

Said tract contains 295 square feet, more or less.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
2 OF 2

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **DARRELL R. JOHNSON AND JESSICA L. JOHNSON**, whether one or more, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of levee and storm sewer construction and activities appurtenant thereto, said land being more fully described, to-wit:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence North 54°39'32" East for a distance of 49.99 feet; thence North 61°38'12" East for a distance of 49.25 feet to a point of intersection with the easterly line of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 2.93 feet to the true point of beginning.

Said tract contains 295 square feet, more or less.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

Grantor, his successors and assigns, hereby covenants to and with Grantee that Grantee's

officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, his successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

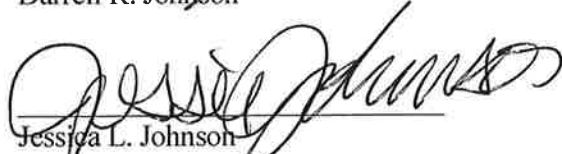
This easement shall terminate on June 30, 2023.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set her hand and caused this instrument to be executed
this 24th day of November, 2021.

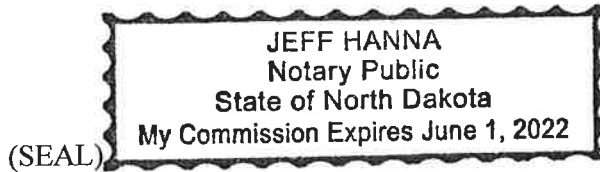
GRANTORS:



Darrell R. Johnson


Jessica L. Johnson

STATE OF North Dakota)
) ss.
COUNTY OF Cass)

On this 24th day of November, 2021, before me, a notary public in and for said county and state, personally appeared Darrell R. Johnson and Jessica L. Johnson to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.




Notary Public
Cass County, North Dakota

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this ____ day of _____, 2021.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

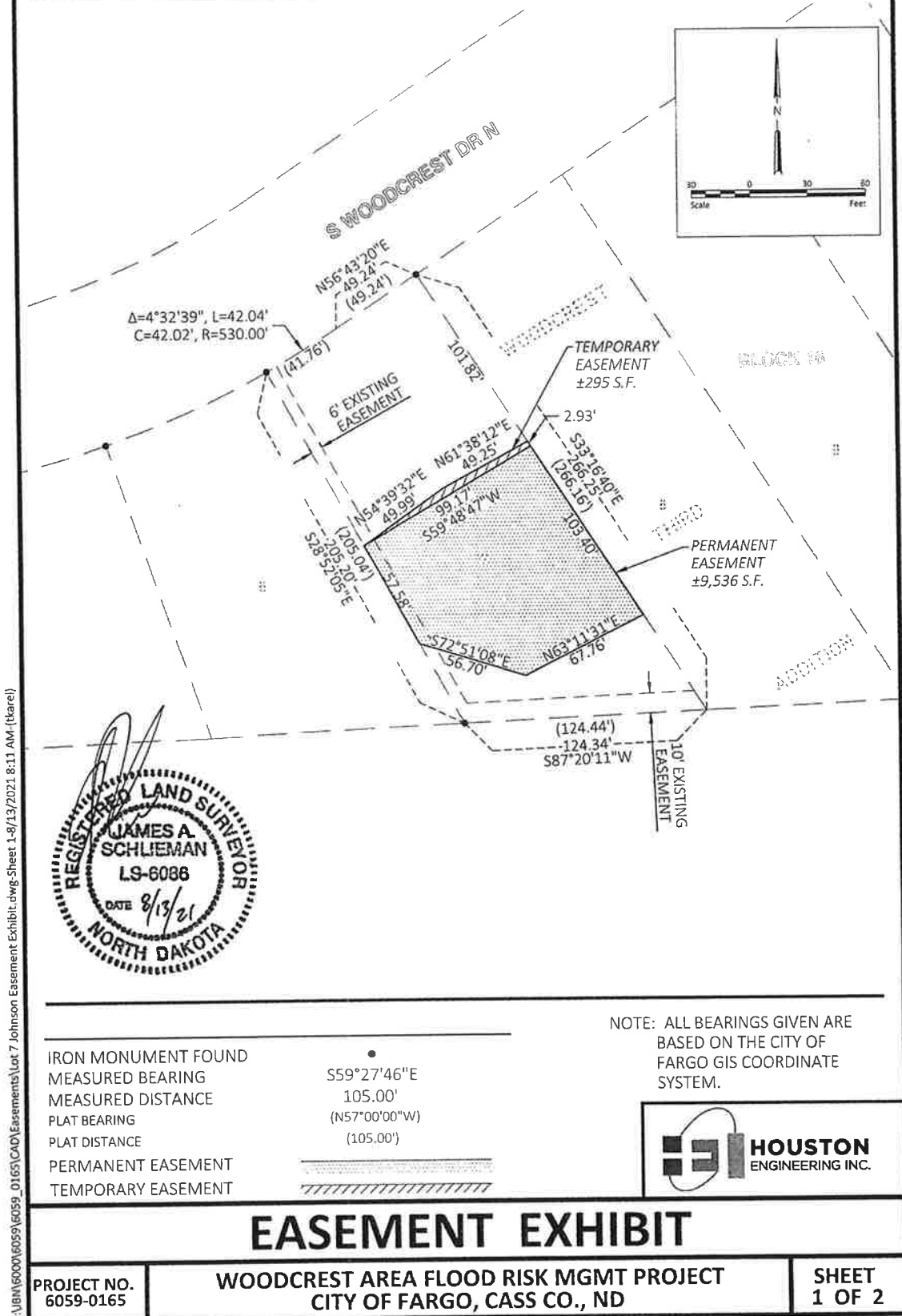
(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
James A. Schlieman
Registered Land Surveyor
LS-6086
Houston Engineering Inc.
1401 21st Ave. N.
Fargo, ND 58102
(701) 237-5065

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

PART OF LOT 7, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



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PART OF LOT 7, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

Description - Permanent Easement:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence South 28°52'05" East, along the westerly line of said Lot 7, for a distance of 57.58 feet; thence South 72°51'08" East for a distance of 56.70 feet; thence North 63°11'31" East for a distance of 67.76 feet to a point of intersection with the easterly line of said Lot 7; thence North 33°16'40" West, along the easterly line of said Lot 7, for a distance of 103.40 feet to the true point of beginning.

Said tract contains 9,536 square feet, more or less.

Description - Temporary Easement:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence North 54°39'32" East for a distance of 49.99 feet; thence North 61°38'12" East for a distance of 49.25 feet to a point of intersection with the easterly line of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 2.93 feet to the true point of beginning.

Said tract contains 295 square feet, more or less.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
2 OF 2

H:\JAN\6000\6059\6059_0165\CAD\Easements\Lot 7 Johnson Easement Exhibit.dwg-Sheet 2-8/13/2021 8:11 AM-(tkarel)

COVER SHEET
CITY OF FARGO PROJECTS

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Project as it will appear in the Contract:

Sidewalk & Shared Use Path Rehab/Reconstruction

Project No. SR-22-A

Call For Bids February 7, 2022

Advertise Dates February 16 & 23, March 2, 2022

Bid Opening Date March 16, 2022

Substantial Completion Date September 9, 2022

Final Completion Date September 30, 2022

N/A PWPEC Report (Attach Copy) (**Part of the 2022 C.I.P.**)

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

N/A Notice to Property Owners (Dan Eberhardt)

Project Engineer Brandon Beaudry

Phone No. (701) 476-4107

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)

**ENGINEER'S REPORT
 SIDEWALK & SHARED USE PATH REHAB/RECONSTRUCTION
 PROJECT NO. SR-22-A
 VARIOUS AREAS CITY WIDE**

Nature & Scope

This project is for new construction and reconstruction of sidewalk and curb ramps throughout the City of Fargo.

Purpose

To install and reconstruct sidewalks and curb ramps ordered by the City Commission.

Feasibility

The estimated cost of construction is \$758,355.00. The cost breakdown is as follows:

Assessed Sidewalks			
Construction Cost			\$508,265.00
Fees			
Engineering	10%		\$50,826.50
Admin	4%		\$20,330.60
Legal	3%		\$15,247.95
Interest	4%		\$20,330.60
Contingency	5%		\$25,413.25
Total Estimated Cost			\$640,413.90
Funding			
Sidewalk Assessments	100.00%		\$640,413.90

City Funded Sidewalks

Construction Cost		\$250,090.00
--------------------------	--	--------------

Fees		
-------------	--	--

Engineering	10%	\$25,009.00
Admin	4%	\$10,003.60
Legal	3%	\$7,502.70
Interest	4%	\$10,003.60
Contingency	5%	\$12,504.50

Total Estimated Cost		\$315,113.40
-----------------------------	--	---------------------

Funding		
----------------	--	--

Sales Tax Funds - Infrastructure - 420	100.00%	\$315,113.40
--	---------	--------------

Project Funding Summary		
--------------------------------	--	--

Sidewalk Assessments	67.02%	\$640,413.90
Sales Tax Funds - Infrastructure - 420	32.98%	\$315,113.40

Total Estimated Project Cost		\$955,527.30
-------------------------------------	--	---------------------

We believe this project to be cost effective.



A handwritten signature of Tom Knakmuhs in black ink.

Tom Knakmuhs, PE
Assistant City Engineer

COVER SHEET
CITY OF FARGO PROJECTS

(96)

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Project as it will appear in the Contract:

Storm Sewer Repairs & Incidentals

Project No. UR-21-A

Call For Bids February 7, 2022

Advertise Dates February 16 & 23, March 2, 2022

Bid Opening Date March 16, 2022

Substantial Completion Date September 15, 2022

Final Completion Date October 15, 2022

N/A PWPEC Report (Attach Copy) (**Part of the 2022 C.I.P.**)

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

N/A Notice to Property Owners (Dan Eberhardt)

Project Engineer Roger Kluck

Phone No. (701) 241-1537

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)

**ENGINEER'S REPORT
 STORM SEWER REPAIRS & INCIDENTALS
 PROJECT NO. UR-21-A
 VARIOUS LOCATIONS**

Nature & Scope

This project is for the repair of a slope failure on the storm water detention pond at 307 43 ½ Street South. This project will provide drainage improvements in the back yards of homes in Deer Creek housing subdivision along the Drain 27 levee. This project will also install a gate on the access road to the Deer Creek Storm Sewer Lift Station and fix wheel ruts on the Drain 27 levee.

Purpose

The purpose of this project is to repair and improve existing storm sewer infrastructure.

Feasibility

The estimated cost of construction is \$188,815.00. The cost breakdown is as follows:

Storm Water Utility Funds		
Construction Cost		\$188,815.00
Fees		
Engineering	10%	\$18,881.50
Admin	4%	\$7,552.60
Legal	3%	\$5,664.45
Interest	4%	\$7,552.60
Contingency	5%	\$9,440.75
Total Estimated Cost		\$237,906.90
Funding		
Utility Funds - Stormwater - 524	100.00%	\$237,906.90
Project Funding Summary		
Utility Funds - Stormwater - 524	100.00%	\$237,906.90
Total Estimated Project Cost		\$237,906.90

We believe this project to be cost effective.



A handwritten signature in black ink, appearing to read "T. Knakmuhs", written over a horizontal line.

Tom Knakmuhs, PE
 Assistant City Engineer

(10)

CITY OF FARGO, NORTH DAKOTA
FINANCIAL STATUS REPORT - MAJOR OPERATING FUNDS
2021 - YEAR TO DATE THROUGH 12/31/2021
BUDGET TO ACTUAL (Unaudited)

REVENUES:	Budget	Actual	Variance	Variance Percentage	Footnotes
General Fund	\$ 102,474,000	\$ 99,459,000	\$ (3,015,000)	-2.9%	
Enterprise Funds:					
Water	26,327,000	26,662,000	335,000	1.3%	(2)
Solid Waste	18,495,000	17,211,000	(1,284,000)	-6.9%	
Wastewater	13,718,000	15,788,000	2,070,000	15.1%	
Transit	11,912,000	10,696,000	(1,216,000)	-10.2%	
Street Lighting	3,590,000	3,598,000	8,000	0.2%	
Storm Sewer	3,041,000	3,123,000	82,000	2.7%	
Forestry	2,635,000	2,670,000	35,000	1.3%	
Vector Control	754,000	758,000	4,000	0.5%	
Total Enterprise Funds	80,472,000	80,506,000	34,000	0.0%	
Total Operating Funds	\$ 182,946,000	\$ 179,965,000	\$ (2,981,000)	-1.6%	

EXPENDITURES:	Budget	Actual	Variance	Variance Percentage	Notes
General Fund	\$ 109,266,000	\$ 107,498,000	1,768,000	1.6%	
Enterprise Funds:					
Water	\$ 26,529,000	\$ 26,359,000	170,000	0.6%	(1)
Solid Waste	18,981,000	18,865,000	116,000	0.6%	
Wastewater	16,025,000	14,928,000	1,097,000	6.8%	
Transit	10,045,000	10,142,000	(97,000)	-1.0%	
Street Lighting	3,711,000	3,684,000	27,000	0.7%	
Storm Sewer	2,389,000	1,967,000	422,000	17.7%	
Forestry	2,609,000	2,603,000	6,000	0.2%	
Vector Control	712,000	392,000	320,000	44.9%	
Total Enterprise Funds	81,001,000	78,940,000	2,061,000	2.5%	
Total Operating Funds	\$ 190,267,000	\$ 186,438,000	\$ 3,829,000	2.0%	


Reporting Basis: Modified Accrual Period 13 - preliminary as of 2/1/2022

- (1) Weather conditions currently impact service requirements producing a positive spending variance
(2) Final revenue accrual entries have not been posted as of this date



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 25, 2022

**RE: AGREEMENTS FOR INDEPENDENT CONTRACTORS TO SERVE
AS LOGISTICS AND OPERATIONS SUPPORT FOR THE COVID-
19 INCIDENT TESTING SITE**

The attached agreements for services are for the below listed independent contractors to serve as the Logistics and Operations Support for the COVID-19 Testing Site. The pay is for \$23.00 an hour, overtime at the rate of \$34.50 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost per individual will not exceed a total of \$9,900.

Independent Contractors:

Melvis Ngefah

Valerie Luistro

Admira Redic

No Budget Adjustments

If you have any questions, please call me at 241.1380.

Suggested Motion: Move to approve the agreements with the above listed independent contractors.

DF/lls
Enclosure



THIS AGREEMENT, effective the 3rd day of January, by and between Fargo Cass Public Health ("FCPH"); and Admira Redic.

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

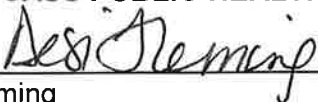
- A. Term of Agreement:** The parties entered into a written agreement for the period of January 3, 2022 through December 31, 2022.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. They will be responsible for services including all testing event supplies and logistics support.
- C. Reimbursement:** Admira Redic shall be reimbursed for the above services rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50, not to exceed a total of \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties..

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH



Desi Fleming

Director of Public Health

Date 1/26/22

INDEPENDENT CONTRACTOR



Admira Redic

Independent Contractor

Date 1-25-2022

Timothy J. Mahoney
Mayor, City of Fargo

Date _____



AGREEMENT FOR SERVICES



THIS AGREEMENT, effective the 3rd day of January, by and between Fargo Cass Public Health ("FCPH"); and Valerie Luistro.

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

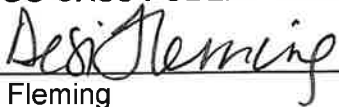
- A. Term of Agreement:** The parties entered into a written agreement for the period of January 3, 2022 through December 31, 2022.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. They will be responsible for services including all testing event supplies and logistics support.
- C. Reimbursement:** Valerie Luistro shall be reimbursed for the above services rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50, not to exceed a total of \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties..

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH


 Desi Fleming
 Director of Public Health

Date 1/26/22

INDEPENDENT CONTRACTOR


 Valerie Luistro
 Independent Contractor

Date 1/25/2022

 Timothy J. Mahoney
 Mayor, City of Fargo

Date _____



AGREEMENT FOR SERVICES



THIS AGREEMENT, effective the 24th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Melvis Ngefah

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

- A. Term of Agreement:** The parties entered into a written agreement for the period of January 24, 2022 through December 31, 2022.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.
- C. Reimbursement:** Melvis Ngefah shall be reimbursed for the above services (demographics) rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

Desi Fleming
Desi Fleming, Director of Public Health

Date 1/26/22

Timothy J. Mahoney, Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR

Melvis Ngefah
Melvis Ngefah
Independent Contractor


Date 01/25/2022



12

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 28, 2022

**RE: AGREEMENTS FOR INDEPENDENT CONTRACTORS TO SERVE
AS LOGISTICS AND OPERATIONS SUPPORT FOR THE COVID-
19 INCIDENT TESTING SITE**

The attached agreements for services are for the below listed independent contractors to serve as the Logistics and Operations Support for the COVID-19 Testing Site. The pay is for \$23.00 an hour, overtime at the rate of \$34.50 an hour, if an individual is doing swabbing they will be compensated at \$30.00 an hour, overtime rate of \$45.00. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost per individual will not exceed a total of \$9,900.

Independent Contractors:

Morgan Schultz
Makayla Gratton

Noah Glad

Mary Goroski

No Budget Adjustments

If you have any questions, please call me at 241.1380.

Suggested Motion: Move to approve the agreements with the above listed independent contractors.

DF/lls
Enclosure



AGREEMENT FOR SERVICES



THIS AGREEMENT, effective the 18th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Morgan Schultz

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

- A. Term of Agreement:** The parties entered into a written agreement for the period of January 18, 2022 through December 31, 2022.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.
- C. Reimbursement:** Morgan Schultz shall be reimbursed for the above services (demographics) rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

Desi Fleming
Desi Fleming, Director of Public Health

Date 1/28/22

Timothy J. Mahoney, Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR

Morgan Schultz
Morgan Schultz
Independent Contractor

Date 1/21/2022



AGREEMENT FOR SERVICES



**Fargo Cass
Public Health**
Prevent. Promote. Protect.

THIS AGREEMENT, effective the 26th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Makayla Gratton

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

- A. Term of Agreement:** The parties entered into a written agreement for the period of January 26, 2022 through December 31, 2022.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.
- C. Reimbursement:** Makayla Gratton shall be reimbursed for the above services (demographics) rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

Desi Fleming
Desi Fleming, Director of Public Health

Date 1/28/22

Timothy J. Mahoney, Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR

Makayla Gratton
Makayla Gratton
Independent Contractor

Date 27 JAN 22



AGREEMENT FOR SERVICES



THIS AGREEMENT, effective the 20th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Noah Glad

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

- A. Term of Agreement:** The parties entered into a written agreement for the period of January 20, 2022 through December 31, 2022.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.
- C. Reimbursement:** Noah Glad shall be reimbursed for the above services (demographics) rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

Desi Fleming
Desi Fleming, Director of Public Health

Date 1/28/22

Timothy J. Mahoney, Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR

Noah Glad
Noah Glad
Independent Contractor

Date 1/26/22



AGREEMENT FOR SERVICES



**Fargo Cass
Public Health**
Prevent. Promote. Protect.

THIS AGREEMENT, effective the 19th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Mary Goroski

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

- A. Term of Agreement:** The parties entered into a written agreement for the period of January 19, 2022 through February 28, 2022.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.
- C. Reimbursement:** Mary Goroski shall be reimbursed for the above services (demographics) rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

Desi Fleming
Desi Fleming, Director of Public Health

Date 1/19/2022

Timothy J. Mahoney, Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR

Mary Goroski
Mary Goroski
Independent Contractor

Date 1-26-22

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To: Board of City Commissioners

From: Jill Minette, Director of Human Resources *as for jym*

Re: Blue Cross Blue Shield of North Dakota - Health Insurance Benefit Plan Agreement and Dental Insurance Group Insurance Policy

Date: February 1, 2022

Please see the attached Blue Cross Blue Shield of North Dakota (BCBSND) Health Insurance Benefit Plan Agreement and Dental Group Insurance Policy. The health insurance agreement and dental insurance policy reflect the renewal terms previously approved for the 2022 plan year and have been reviewed by the City Attorney.

RECOMMENDED MOTION: To approve the Blue Cross Blue Shield of North Dakota (BCBSND) Health Insurance Benefit Plan Agreement and Dental Group Insurance Policy.

CITY OF FARGO

January 1, 2022 through December 31, 2022

BENEFIT PLAN AGREEMENT

This Benefit Plan Agreement ("Agreement") is entered into between CITY OF FARGO ("the Plan Sponsor"), CITY OF FARGO ("the Plan Administrator") and Blue Cross Blue Shield of North Dakota ("BCBSND"). Throughout this Agreement, BCBSND is referred to as the "Company."

The Plan Sponsor has established and maintains a fully insured group health plan (the Plan) which provides, among other things, various benefits to Members in the Plan, as set forth in the Certificate of Insurance provided to plan Members. The Plan Administrator is the administrator of the Plan established through this Agreement.

In consideration of payment of required premium and acceptance of applications, the Company enters into this Agreement with the Plan Sponsor and the Plan Administrator. The Company agrees to provide plan Members the benefits set forth in the Certificate of Insurance, in accordance with its terms and conditions. This Agreement also includes the Certificate of Insurance, applications, Identification Cards and any endorsements, supplements, attachments, addenda or amendments.

FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. EFFECTIVE DATE AND PLAN YEAR

This Agreement is effective January 1, 2022, through December 31, 2022, unless terminated as provided in Section 7. TERMINATION.

For the purposes of the costs of any and all benefits and services extended through this Benefit Plan, including the implementation of any benefit changes required under federal or state law, the Plan Administrator agrees that the Plan Year shall commence on January 1, unless it is terminated by one of the parties as specified in Section 7. TERMINATION.

2. DEFINITIONS

This section defines the terms used in this Agreement. These terms will be capitalized throughout this Agreement when referred to in the context defined.

- 2.1 **CLAIM** - notification in a form acceptable to the Company that services have been provided or furnished to a Member.
- 2.2 **DATA AGGREGATION** - the combining of Protected Health Information the Company creates or receives for or from the Plan and for or from other health plans or health care providers for which the Company is acting as a business associate to permit data analyses that relate to the Health Care Operations of the Plan and those other health plans or providers.
- 2.3 **HEALTH CARE OPERATIONS** - any of the activities of a health plan to the extent the activities relate to those functions that make it a health plan.
- 2.4 **MEMBER** - the Subscriber and any dependent of a Subscriber or any other person designated by a Subscriber or by the terms of the Plan who is or may become entitled to a benefit under the Plan. The term shall also include any proprietor, partner, or owner of the Plan Sponsor, if any, who is designated by the terms of the Plan who is or may become entitled to a benefit under the Plan. In no case shall the term Member include any person not otherwise entitled to coverage under the terms of the Plan.

For the purposes of determining the various benefits and restrictions or other limitations thereto made available to a Member under the terms of this Agreement, all benefits under any Plan option or tier (and any restrictions or other limitations thereto) made available to or received by a Member shall accumulate toward that Member's benefits and any restrictions and other limitations thereto.

- 2.5 **PAYMENT** - activities undertaken to obtain premiums, determine or fulfill coverage and benefits, or obtain or provide reimbursement for health care services.
- 2.6 **PROTECTED HEALTH INFORMATION (PHI)** - individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:
 - A. is created by or received from a Health Care Provider, health care employer, or health care clearinghouse;
 - B. relates to a Member's past, present or future physical or mental health or condition;
 - C. relates to the provision of health care to a Member;
 - D. relates to the past, present or future payment for health care to or on behalf of a Member; or
 - E. identifies a Member or could reasonably be used to identify a Member.

Educational records and employment records are not considered PHI under federal law.

- 2.7 **SECURITY INCIDENT** - any attempted or successful unauthorized access, use disclosure, modification, or destruction of a Member's electronic PHI or interference with the Company's system operations in the Company's information systems.
- 2.8 **STANDARD TRANSACTIONS** - health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in accordance with federal or state law.
- 2.9 **SUBSCRIBER** - any employee of the Plan Sponsor who is or may become eligible to receive a benefit under the Plan. The term includes all common law employees as well as any proprietors, partners, or other owners who work for the Plan Sponsor, if any, and who are otherwise entitled to coverage under the Plan. Notwithstanding the above, in no case shall the term Subscriber include any person not otherwise entitled to coverage under the terms of the Plan.
- 2.10 **SUCCESSFUL SECURITY INCIDENTS** - Security Incidents that result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
- 2.11 **UNSUCCESSFUL SECURITY INCIDENTS** - Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.

3. **PREMIUMS**

- 3.1 All premiums are due and payable before the first of the month. If premiums are not received before the date due, a grace period of 31 days is allowed. The Plan Administrator remains responsible for payment of any premium due during the grace period. If the Plan Administrator provides written notice of cancellation during the grace period, the Plan Administrator will be charged a pro rata premium.
- 3.2 The Company will advise the Plan Administrator of any change in required premium at least 31 days prior to the anniversary date of this Agreement, unless otherwise specifically agreed to by the parties. In addition, the Company reserves the right, upon providing at least 31 days notice, to change the required premium in response to any change in the rate of insurance premium tax assessed by the state of North Dakota or if the Plan Administrator should choose to offer a dual choice option.

3.3 Health Premiums:

	Individual Coverage	Parent and Child Coverage	Parent and Children Coverage	Two Person Coverage	Family Coverage
BlueAccess	\$711.20	\$1,721.00	\$1,721.00	\$1,721.00	\$1,721.00

4. **PRIVACY USE AND DISCLOSURE RESPONSIBILITIES**4.1 **RESPONSIBILITIES OF THE COMPANY****A Privacy of Protected Health Information (PHI)**

1. The Company will keep confidential all Claim records and all other PHI the Company creates or receives in the performance of its duties under this Agreement. Except as permitted or required by this Agreement for the Company to perform its duties under this Agreement, the Company will not use or disclose such Claim information or other PHI without the authorization of the Member who is the subject of such information or as required by law.
2. The Company will neither use nor disclose Members' PHI (including any Members' PHI received from a business associate of the Plan) except (1) as permitted or required by this Agreement, (2) as permitted in writing by the Plan Administrator, (3) as authorized by Members, or (4) as required by law.
3. The Company will be permitted to use or disclose Members' PHI only as follows:
 - a. The Company will be permitted to use and disclose Members' PHI (a) for the management, operation and administration of the Plan that the Plan Administrator offers Members, and (b) for the services set forth in the Plan, which include Payment activities, Health Care Operations, and Data Aggregation as these terms are defined under federal law. The Company also may de-identify PHI it obtains or creates in the course of providing services for the Plan Administrator.
 - (1) The Company will be permitted to use Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities.
 - (2) The Company will be permitted to disclose Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities only if (i) the disclosure is required by law, or (ii) before the disclosure, the Company obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written Agreement, that the entity will hold Members' PHI in confidence, use or further disclose Members' PHI only for the purposes for which the Company disclosed it to the entity or as required by law, and notify the Company of any instance the entity becomes aware of where the confidentiality of any Members' PHI was breached.
 - b. The Company will make reasonable efforts to use, disclose, or request only a limited data set where practical. Otherwise, the minimum necessary amount of Members' PHI to accomplish its intended purpose.
4. Other than disclosures permitted by Section 4.1(A)3, the Company will not disclose Members' PHI to the Plan Administrator or to the Plan's business associate except as directed by the Plan Administrator in writing.

5. The Company will require each subcontractor and agent to which the Company is permitted by this Agreement or in writing by the Plan Administrator to disclose Members' PHI to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Members' PHI as this Agreement applies to the Company.
6. The Company will not disclose any Members' PHI to the Plan Sponsor, except as permitted by and in accordance with Section 4.1(A)3.
7. Disposition of Protected Health Information

The parties agree that upon termination, cancellation, expiration or other conclusion of this Agreement, the Company will return or destroy all PHI received or created by the Company on the Plan Administrator's behalf as soon as feasible. Due to various regulatory and legal requirements, the Plan Administrator acknowledges that immediate return or destruction of all such information is not feasible. The Company agrees that upon conclusion of this Agreement for any reason, it will use or disclose the PHI it received or created on the Plan's behalf only as necessary to meet the Company's regulatory and legal requirements and for no other purposes unless permitted in writing by the Plan Administrator. The Company will destroy PHI received or created by the Company on the Plan Administrator's behalf that is in the Company's possession under such circumstances and upon such schedule as the Company deems consistent with its regulatory and other legal obligations.

These responsibilities agreed to by the Company and related to protecting the privacy and safeguarding the security of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and, where applicable, shall govern the Company's receipt, use or disclosure of PHI pursuant to the terms of this Agreement.

8. The Company will meet all obligations imposed upon it by the HIPAA Privacy Rule.

B. Information Safeguards

1. The Company will maintain reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of Member PHI. The safeguards must reasonably protect Member PHI from any intentional or unintentional use or disclosure in violation of federal law and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
2. The Company will implement administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI the Company creates, receives, maintains, or transmits on behalf of the Plan Administrator as required by federal law.

C. Inspection of Books and Records

The Company will make its internal practices, books, and records relating to its use and disclosure of PHI created or received for or from the Plan Administrator available to the U.S. Department of Health and Human Services to determine compliance with federal law or this Agreement.

- D. The Company will prepare and distribute a notice of privacy practices appropriate for the Plan to meet its notice obligations under federal law. The Plan Administrator authorizes the Company to disclose the minimum necessary PHI to the Plan Sponsor for plan administration functions specified in the Plan documents as amended.

E. Information Privacy and Safeguard Provisions Survive Termination of Agreement

These responsibilities agreed to by the Company and related to protecting the privacy of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and where applicable, shall govern the Company's receipt and use of PHI obtained pursuant to the terms of this Agreement.

4.2 RESPONSIBILITIES OF THE PLAN SPONSOR

- A. The Plan Sponsor retains full and final authority and responsibility for the Plan and its operation. The Company is empowered to act on behalf of the Plan only as stated in this Agreement or as mutually agreed in writing by the Plan Sponsor and the Company.
- B. The Plan Sponsor will have the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules, and regulations, including any licensing, filing, reporting, and disclosure requirements, that may apply to the Plan. The Company will have no responsibility for or liability with respect to the Plan's compliance or noncompliance with any applicable federal, state, or local law, rule, or regulation.

If the Group offers a high deductible health plan, the Plan Sponsor assumes sole responsibility for determining whether the Plan qualifies as a high deductible health plan under Section 223(c)(2) of the U.S. Internal Revenue Code. THE COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THE PLAN.

If the Group offers a high deductible health plan, the Company does not provide legal or tax advice, and expressly disclaims responsibility for determining, on behalf of any individual or group, the legal and tax implications of: (1) establishing a health savings account; (2) eligibility for a health savings account; (3) the contributions made to a health savings account; (4) the deductibility of contributions to a health savings account; and (5) withdrawals from a health savings account and related taxation.

- C. By executing this Agreement, the Plan Sponsor certifies to the Company that its Plan documents have been amended to incorporate the provisions required by and under federal law, and agrees to comply with the Plan Administrator's plan documents.

The Company may rely on Plan Sponsor's certification and Plan Administrator's written authorization, and will have no obligation to verify (1) that the Plan Administrator's plan documents have been amended to comply with the requirements of federal law or this Agreement or (2) that the Plan Sponsor is complying with the Plan Administrator's plan document as amended.

- D. By executing this Agreement, the Plan Sponsor also certifies to the Company that its Plan does not contain a waiting period, as defined under applicable federal HIPAA portability regulations, exceeding 60 days. The Plan Sponsor acknowledges that the Company will rely on the Plan Sponsor's certification and that the Plan Sponsor shall have a continuing obligation to immediately notify the Company if any revisions are made to the Plan's waiting period.

5. **INTER-PLAN ARRANGEMENTS**

BCBSND has a variety of relationships with other Blue Cross and/or Blue Shield Licensees referred to generally as "Inter-Plan Arrangements." These Inter-Plan Arrangements operate under rules and procedures issued by the Blue Cross Blue Shield Association ("Association"). Whenever a Member accesses health care services outside of the geographic area BCBSND serves, the claim for those services may be processed through one of these Inter-Plan Arrangements and presented to BCBSND for payment in accordance with the rules of the Inter-Plan Arrangements. The Inter-Plan Arrangements are described generally below.

Typically when accessing care outside the geographic area BCBSND serves, a Member obtains care from health care providers that have a contractual agreement ("participating health care providers") with the local Blue Cross and/or Blue Shield Licensee in that other geographic area ("Host Blue"). In some instances, a Member may obtain care from health care providers in the Host Blue geographic area that do not have a contractual agreement ("nonparticipating health care providers") with a Host Blue. BCBSND remains responsible for fulfilling its contractual obligations to the Plan Administrator. BCBSND payment practices in both instances are described below.

All claim types are eligible to be processed through Inter-Plan Arrangements, as described above, except for all dental care benefits and vision care benefits (except when paid as medical claims/benefits), and those prescription drug benefits that may be administered by a third party contracted by BCBSND to provide the specific service or services.

A. **BlueCard® Program**

The BlueCard Program is an Inter-Plan Arrangement. Under this Arrangement, when Members access Covered Services within the geographic area served by a Host Blue, the Host Blue will be responsible for contracting and handling all interactions with its participating health care providers. The financial terms of the BlueCard Program are described generally below.

Liability Calculation Method Per Claim:

Unless subject to a fixed dollar copayment, the calculation of Member liability on claims for Covered Services processed through the BlueCard Program will be based on the lower of the Host Blue's participating health care provider's billed charges or the negotiated price made available to BCBSND by the Host Blue.

Host Blues determine a negotiated price, which is reflected in the terms of each Host Blue's health care provider contracts. The negotiated price made available to BCBSND by the Host Blue may represent one of the following:

1. the actual price. An actual price is a negotiated rate of payment without any other increases or decreases; or
2. an estimated price. An estimated price is a negotiated rate of payment reduced or increased by a percentage to take into account certain payments negotiated with the provider and other claim- and non-claim-related transactions. Such transactions may include, but are not limited to, anti-fraud and abuse recoveries, provider refunds not applied on a claim-specific basis, retrospective settlements, and performance-related bonuses or incentives; or
3. an average price. An average price is a percentage of billed covered charges representing the aggregate payments negotiated by the Host Blue with all of its health care providers or a similar classification of its providers and other claim- and non-claim-related transactions. Such transactions may include the same ones as noted above for an estimated price.

Host Blues determine whether or not they will use an actual, estimated or average price. Host Blues using either an estimated price or an average price may prospectively increase or reduce such prices to correct for over- or underestimation of past prices (i.e., prospective adjustments may mean that a current price reflects additional amounts or credits for claims already paid or anticipated to be paid to providers or refunds received or anticipated to be received from providers). However, the BlueCard Program requires that the amount paid by the Member is a final price; no future price adjustment will result in increases or decreases to the pricing of past claims. The method of claims payment by Host Blues is taken into account by BCBSND in determining premiums.

B. Value-Based Programs

BCBSND has included a factor for bulk distributions from Host Blues in the Plan Administrator's premium for Value-Based Programs when applicable under this Agreement. "Value-Based Program" means an outcomes-based payment arrangement and/or a coordinated care model facilitated with one or more local health care providers that is evaluated against cost and quality metrics/factors and is reflected in provider payment.

C. Return of Overpayments

Under the Inter-Plan Arrangements, recoveries from a Host Blue or from participating health care providers of a Host Blue can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, provider/hospital bill audits, credit balance audits, utilization review refunds, and unsolicited refunds. In some cases, the Host Blue will engage third parties to assist in discovery or collection of recovery amounts, which generally require correction on a claim-by-claim or prospective basis. The fees of such a third party may be charged to the Plan Administrator as a percentage of the recovery.

D. Federal/State Taxes/Surcharges/Fees

In some instances federal or state laws or regulations may impose a surcharge, tax or other fee that applies to insured accounts. If applicable, BCBSND will include any such surcharge, tax or other fee in determining premiums.

E. Nonparticipating Health Care Providers Outside the BCBSND Service Area

1. Member Liability Calculation

When Covered Services are provided outside of BCBSND's service area by nonparticipating health care providers, the amount the Member pays for such services will generally be based on either the Host Blue's nonparticipating health care provider local payment or the pricing arrangements required by applicable state law. In these situations, the Member may be responsible for the difference between the amount that the nonparticipating health care provider bills and the payment BCBSND will make for the Covered Services as set forth in this paragraph. Payments for out-of-network emergency services are governed by applicable federal and state law.

2. Exceptions

In certain situations, BCBSND may pay claims based on the payment BCBSND would make if the Covered Services had been obtained within the BCBSND service area. Such situations include where a Member did not have reasonable access to a participating health care provider, as determined by BCBSND in its sole and absolute discretion or by applicable state law. In other situations, BCBSND may pay such a claim based on the payment BCBSND would make if BCBSND were paying a nonparticipating health care provider inside of BCBSND's service area (as described in the Member's Certificate of Insurance) where the Host Blue's corresponding payment would be more than BCBSND's payment to a nonparticipating health care provider within the BCBSND service area. BCBSND may also in its sole and absolute discretion, negotiate a payment with such a health care provider on an exception basis. In any of these situations, the Member may be responsible for the difference between the amount that the nonparticipating health care provider bills and payment BCBSND will make for the Covered Services as set forth in this paragraph.

F. Blue Cross Blue Shield Global Core

If Members are outside the United States, the Commonwealth of Puerto Rico and the U.S. Virgin Islands ("BlueCard service area"), they may be able to take advantage of Blue Cross Blue Shield Global Core when accessing Covered Services. Blue Cross Blue Shield Global Core is not served by a Host Blue.

1. Inpatient Services

In most cases, if a Member contacts the Blue Cross Blue Shield Global Core Service Center for assistance, hospitals will not require the Member to pay for covered inpatient services, except for Cost Sharing Amounts. In such cases, the hospital will submit the Member's claims to the Blue Cross Blue Shield Global Core Service Center to initiate claims processing. However, if the Member paid in full at the time of service, the Member must submit a claim to obtain reimbursement for Covered Services.

2. Outpatient Services

Physicians, urgent care centers and other outpatient health care providers located outside the BlueCard service area will typically require a Member to pay in full at the time of service. The Member must submit a claim to obtain reimbursement for Covered Services.

3. Submitting a Blue Cross Blue Shield Global Core Claim

When a Member pays for Covered Services outside the BlueCard service area, the Member must submit a claim to obtain reimbursement. For institutional and professional claims, the Member should complete a Blue Cross Blue Shield Global Core International claim form and send the claim form with the health care provider's itemized bill(s) to the Blue Cross Blue Shield Global Core Service Center address on the form to initiate claims processing. The claim form is available from BCBSND, the Blue Cross Blue Shield Global Core Service Center or online at www.bcbsglobalcore.com.

6. RETROSPECTIVE DISCOUNT PAYMENT

Regarding prescription medications or drugs purchased by Members under the terms of the Plan, the Company will pay the amount due to the pharmacy (or other prescription drug retailer) under the terms of the pharmacy provider participating agreement. The amount due to the pharmacy under the terms of the pharmacy provider participating agreement is that which is due at the time the prescription medication or drug is purchased by the Member. The amount due to the pharmacy under the pharmacy provider participating agreement is calculated without regard to any subsequent, retrospective manufacturer discount that may apply to the cost of the prescription medication or drug. The Plan Administrator acknowledges and agrees that, in some cases but not all, drug manufacturers may offer retrospective discounts to the Company on prescription medications and drugs purchased under the terms of the Plan. If a drug manufacturer makes a retrospective discount payment available, the Plan Administrator acknowledges and agrees that a portion of any such retrospective discount may be retained by an entity that performs manufacturer discount program services on behalf of the Company under the terms of this Agreement. The Plan Administrator further acknowledges and agrees that, when made available by the drug manufacturer, another portion of the retrospective discount payment is retained by the Company. In its sole discretion, the Company may periodically refund to the Plan all or part of any rebate payments received. The calculation of any refund rests in the sole discretion of the Company.

7. TERMINATION

- 7.1 This Agreement will automatically terminate without notice on the last day of the month in which the grace period expires if premiums are not paid within the grace period. In the event of termination for nonpayment of premiums, reinstatement of this Agreement will be at the sole discretion of and subject to conditions established by the Company. The Plan Administrator assumes any obligation to provide notice to all Subscribers regarding termination of this Agreement due to nonpayment of premiums.
- 7.2 This Agreement may be terminated by the Plan Administrator providing the Company with written notice of termination at least 31 days in advance of the requested date of termination. Termination will be effective on the last day of the month. If the requested date of termination is other than the last day of the month, termination will be effective the last day of the month of the requested date of termination.
- 7.3 In the event of a breach by either party, other than for nonpayment of premium, the other party may terminate this Agreement by written notice to the breaching party. The breaching party has 31 days to fully cure the breach. If the breach is not cured within 31 days after written notice, this Agreement will immediately terminate.
- 7.4 The Plan Administrator will have the right to terminate this Agreement if the Company has engaged in a pattern of activity or practice that constitutes a material breach or violation of the Company's obligations regarding PHI under this Agreement and, on notice of such material breach or violation from the Plan Administrator, fails to take reasonable steps to cure the breach or end the violation.

If the Company fails to cure the material breach or end the violation after the Plan Administrator's notice, the Plan Administrator may terminate this Agreement by providing the Company written notice of termination setting forth the uncured material breach or violation serving as the basis for the termination and specifying the effective date of the termination.

- 7.5 The Company may decide to discontinue offering the Benefit Plan that is the subject of this Agreement, or all of its group health benefit plans including the Benefit Plan that is the subject of this Agreement, at any time. If the Benefit Plan that is the subject of this Agreement is discontinued, the Company will provide the Plan Administrator and Subscribers with at least 90 days prior written notice of the decision to cancel coverage. This Agreement shall automatically terminate on the date of discontinuation identified in the written notice. The Plan Administrator will be given the option to purchase any other group health benefit plans currently offered by the Company in the market. If all group health benefit plans are discontinued including the Benefit Plan that is the subject of this Agreement, the Company will provide the Plan Administrator and Subscribers with at least 180 days prior written notice of the decision to cancel coverage. This Agreement shall automatically terminate on the date of discontinuation identified in the written notice.

8. GENERAL PROVISIONS

- 8.1 The Plan Administrator agrees to furnish the Company with any information required by the Company for the purpose of enrollment. Any change affecting a Member's eligibility must be provided to the Company immediately, but in any event the Plan Administrator will notify the Company of any changes in a Member's eligibility within 31 days of the change. The Plan Administrator acknowledges and agrees that in the event there are premium payments made to the Company by the Plan Administrator based upon a failure by the Plan Administrator to notify the Company of any changes in enrollment or eligibility within 31 days of the change, the Company may retain any and all premium payments made by the Plan Administrator as consideration for the Company's administrative costs and burden incurred by said failure to notify the Company of the change.
- 8.2 The Plan Administrator acknowledges that the administration of the Benefit Plan that is the subject of this Agreement may be subject to regulation under federal and/or state law. The Plan Administrator agrees to furnish the Company with any and all information necessary to comply with any applicable federal and/or state laws and to certify that this information is accurate. If there are any changes in the employer contribution rate for benefits and services available under this Agreement, the Plan Administrator agrees that it is its obligation to provide information related to the change in contribution rates immediately to the Company.
- 8.3 The Plan Administrator agrees to abide by all underwriting requirements established by the Company as these underwriting requirements relate to, including but not limited to, rating factors, the minimum participation of eligible Members, minimum employer contributions, reporting employer contribution rates and provider network restrictions, as permitted and restricted under federal and/or state laws.
- 8.4 The Company will provide formal policy and procedure guidelines to the Plan Administrator for the conduct of external audits or reviews commissioned by the Plan Administrator. The Company shall cooperate with all external audit or review teams.

The Plan Administrator shall provide the Company with the scope and requirements of any audit or review prior to the commencement of the audit or review. If a sample of claims is required, the Company will provide the Plan Administrator with a statistically valid computerized sample of claims.

All audit or review findings shall be discussed with the Company upon discovery to allow further investigation or implementation of corrective action.

All Member records shall be kept confidential and considered proprietary. Such records shall be available for audit or review only after disclosure statements have been signed by the external audit or review team to ensure the information remains confidential and is utilized for the stated purpose only. If any records are removed from the Company's office for purposes of the audit or review, approval must be granted. All records will be subject to the minimum necessary requirements.

- 8.5 No change in this Agreement is valid unless approved by the President and Chief Executive Officer of BCBSND and a designated representative of the Plan Administrator.
- 8.6 Where federal law is not applicable, this Agreement shall be governed by and construed according to the laws of the state of North Dakota.
- 8.7 Any notice required under this Agreement shall be in writing and shall be effective when delivered in person or sent by certified mail to a party at its respective address.
- 8.8 The Plan Administrator hereby expressly acknowledges and understands that BCBSND is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting BCBSND to use the Blue Cross and Blue Shield Service Marks in the state of North Dakota, and that BCBSND is not contracting as an agent of the Association. The Plan Administrator further acknowledges and agrees this legal agreement was not entered into based upon representations by any person or entity other than BCBSND and that no person, entity, or organization other than BCBSND shall be held accountable or liable to the Plan Administrator for any of BCBSND's obligations to the Plan Administrator created under this agreement. This paragraph shall not create any additional obligations whatsoever on the part of BCBSND other than those obligations created under other provisions of this agreement.
- 8.9 It shall be the sole responsibility of the Plan Administrator to distribute Certificates of Insurance to Subscribers of the Plan and to advise Members of their rights under ERISA, including, but not limited to claims appeals procedures. In the event a claim is paid due to the Certificate of Insurance not being distributed to the Subscriber, the Plan Administrator shall be liable for all such claims. The Certificate of Insurance is not the Summary Plan Description but contains some of the information that the Plan Administrator may deem essential for inclusion in the Summary Plan Description. The Plan Administrator has the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules, and regulations, including the creation and distribution of a Summary Plan Description.
- 8.10 If the Plan Administrator has a digital or online version of the Certificate of Insurance available to its employees, the Plan Administrator agrees that it will not alter, modify or change the language of the Certificate of Insurance, and further agrees the Certificate of Insurance, attached as Exhibit A, will be the controlling document in the event of any conflict or liability that might arise as the result of any alterations, modifications or changes made by the Plan Administrator. In the event a claim is paid based on the Plan Administrator's digital or online Certificate of Insurance, the Plan Administrator is liable for all such claims. The Plan Administrator further agrees that no waiver of this agreement is valid unless in writing and approved by the Company.
- 8.11 The Company will prepare Summaries of Benefits and Coverage for distribution to applicants and Members by the Plan Administrator so that the Company, the Plan and the Plan Administrator may all satisfy related disclosure obligations under federal law. It shall be the sole responsibility of the Plan Administrator to distribute the Summaries of Benefits and Coverage in accordance with federal law, and the Plan Administrator acknowledges and agrees that the Company will rely upon the Plan Administrator for compliance with the requirements for distribution of the Summaries of Benefits and Coverage to applicants and Members.
- 8.12 Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Agreement, this Agreement will automatically amend such that the obligations imposed on the Plan Sponsor, the Plan Administrator and the Company remain in compliance with such regulations, unless the Company elects to terminate this Agreement by providing the Plan Sponsor and the Plan Administrator notice of termination in accordance with this Agreement at least thirty-one (31) days before the effective date of such final regulation or amendment to final regulations.

- 8.13 When coverage under this Agreement is terminated, BCBSND will, within a reasonable period of time, issue a notification of termination of coverage to the Subscriber. Upon notification by the Subscriber of the ineligibility of a dependent, a notification of termination of coverage will be issued to the affected Member within a reasonable period of time. Termination notices may also be obtained from BCBSND upon request within 24 months after coverage is terminated.

9. **INDEMNIFICATION CLAUSE**

Each party agrees to indemnify and hold harmless the other party for all causes of action, suits, claims, judgments, settlements, liabilities, damages of any kind, penalties, losses, expenses, court costs and attorneys' fees resulting from or arising out of any duty under this Agreement, if the liability was the consequence of the actions of the indemnifying party.

10. **BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11. **INCORPORATION STATEMENT**

The attached Certificate of Insurance is incorporated herein by reference.

CITY OF FARGO
GROUP HEALTH PLAN (PLAN ADMINISTRATOR)
225 4TH STREET NORTH
FARGO, NORTH DAKOTA 58102

BLUE CROSS BLUE SHIELD OF NORTH DAKOTA*
4510 13TH AVENUE SOUTH
FARGO, NORTH DAKOTA 58121

By: _____



Title: _____

Its President and CEO

Date: _____

November 19, 2021

CITY OF FARGO
(PLAN SPONSOR)
225 4TH STREET NORTH
FARGO, NORTH DAKOTA 58102

By: _____

Title: _____

Date: _____

Benefit Plan Agreement
01/01/2022 – 12/31/2022
253973

*An Independent Licensee of the Blue Cross and Blue Shield Association

Exhibit "A"

**GROUP INSURANCE POLICY
for
Dental Benefits**

**Blue Cross Blue Shield of North Dakota
4510 13th Avenue South
Fargo, North Dakota 58121**

CITY OF FARGO

253973

Effective Date: January 1, 2022

Term: 12 Month(s)

The Policyholder has established and maintains a fully insured group dental plan (the Plan) which provides, among other things, various benefits to Members, as set forth in the Certificate of Insurance (Certificate). The Policyholder and Blue Cross Blue Shield of North Dakota the (Company) will make the dental benefits available to eligible Certificate Holders of the Policyholder and/or their Dependents at 12:01 AM on the Effective Date and upon the terms and conditions contained in this Group Insurance Policy (Group Policy). The Company will pay the benefits described in the Certificate and any Schedule of Benefits or amendments attached hereto, subject to the Group Policy terms. The Certificate is attached to this Group Policy as Exhibit A and incorporated by reference. The parties shall fulfill the obligations stated herein.

Certain terms in this Group Policy have specific meanings as set forth in the Definitions section of this Group Policy and in the Definitions section of the Certificate.

GROUP POLICY AND CONSIDERATION: In consideration of payment of all Premiums when due and receipt of accurate and complete application information, the Company will insure those Members enrolled in the Policyholder's Group Policy for dental benefits in accordance with the terms and conditions of this Group Policy. Coverage will begin at 12:01 AM on the Effective Date shown above. It will remain in force for the initial Term and for such further periods for which it is renewed.



Its President and CEO

November 19, 2021

DEFINITIONS

- A. **CERTIFICATE HOLDER** – any employee of the Policyholder who is or may become eligible to receive a benefit under this Plan. The term includes all common law employees as well as any proprietors, partners or other owners who work for the Policyholder, if any, and who are otherwise entitled to coverage under the Plan. Notwithstanding the above, in no case shall the term Certificate Holder include any person not otherwise entitled to coverage under the terms of the Plan.
- B. **CLAIM** – notification in a form acceptable to the Company that services have been provided or furnished to a Member.
- C. **COMPANY** – Blue Cross Blue Shield of North Dakota (BCBSND), or a third party with which BCBSND contracts for a provider network and to perform certain functions to administer the terms of the Group Policy and coverage within the Certificate.
- D. **DATA AGGREGATION** – the combining of Protected Health Information the Company creates or receives for or from the Plan and for or from other health plans or health care providers for which the Company is acting as a business associate to permit data analyses that relate to the Health Care Operations of the Plan and those other health plans or providers.
- E. **DEPENDENT** – those individuals eligible to enroll for coverage under the Group Policy because of their relationship to the Certificate Holder.
- F. **HEALTH CARE OPERATIONS** – any of the activities of a health plan to the extent the activities relate to those functions that make it a health plan.
- G. **MEMBER** – the Certificate Holder and any Dependent of a Certificate Holder or any other person designated by the Certificate Holder or by the terms of the Plan who is or may become entitled to a benefit under the Plan. The term shall also include any proprietor, partner or owner of the Policyholder, if any, who is designated by the terms of the Plan who is or may become entitled to a benefit under the Plan. In no case shall the term Member include any person not otherwise entitled to coverage under the terms of the Plan.
- H. **POLICYHOLDER** – the entity identified as the Policyholder on the first page of this Group Policy that is also the Plan Sponsor and Plan Administrator for purposes of the Employee Retirement Income Security Act of 1974 (ERISA), as amended.
- I. **PROTECTED HEALTH INFORMATION (PHI)** – individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:
 - 1. is created by or received from a health care provider, health care employer or health care clearinghouse;
 - 2. relates to a Member's past, present or future physical or mental health or condition;
 - 3. relates to the provision of health care to a Member;
 - 4. relates to the past, present, or future payment for health care to or on behalf of a Member; or
 - 5. identifies a Member or could reasonably be used to identify a Member.

Educational records and employment records are not considered PHI under federal law.
- J. **SECURITY INCIDENT** – any attempted or successful unauthorized access, use, disclosure, modification or destruction of a Member's electronic PHI or interference with the Company's system operations in the Company's information systems.

- K. **STANDARD TRANSACTIONS** – health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in accordance with federal or state law.
- L. **SUCCESSFUL SECURITY INCIDENTS** – Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations.
- M. **UNSUCCESSFUL SECURITY INCIDENTS** – Security Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations.

INSURANCE RULES

A. ELIGIBILITY:

In order to be eligible to enroll for benefits under this Group Policy, a Certificate Holder and any Dependents must meet the Policyholder's eligibility requirements, satisfy the requirements and definitions set forth in the Certificate, and meet any requirements of applicable law or regulation.

No person who meets the eligibility requirements of this Group Policy shall be refused enrollment or re-enrollment because of age, race, color, national origin, disability, sexual orientation, gender identity, sex, dental health status, genetic disorder or the existence of a pre-existing dental condition.

B. ENROLLMENT:

Eligible Certificate Holders and/or their Dependents shall become enrolled under the Group Policy as set forth in the Certificate and this Group Policy. An open enrollment period may be provided in which Certificate Holders may elect to enroll or disenroll themselves and Dependents under this Group Policy. Open enrollment occurs at a time and frequency stipulated by the Company subject to the request of the Policyholder or its authorized representative.

GENERAL POLICY RULES

A. PAYMENT OF PREMIUMS:

In consideration of the dental Benefit Plan made available to the Members by the Company, the Premium listed below is payable in accordance with the Premium payment provisions of this Group Policy. The Company reserves the right to seek reimbursement from the Policyholder for any bank charges incurred for insufficient funds on a payment by the Policyholder.

	Individual Coverage	Parent and Child(ren) Coverage	Two Person Coverage	Family Coverage
BlueDental Elite+	\$44.50	\$86.80	\$89.00	\$132.20

B. TERM OF GROUP POLICY:

This Group Policy shall begin at 12:01 A.M. on the Effective Date, continue in effect for the initial term shown on the first page of this Group Policy and automatically renew thereafter for terms indicated in the Group Policy renewal notices, subject to the following:

1. Either the Policyholder or the Company may elect not to renew the Group Policy by providing 60 days prior written notice. In the absence of notice from the Policyholder of its intention not to renew, receipt of the renewal Premium constitutes the Policyholder's acceptance of the renewal. In the event of non-renewal by the Policyholder, any unpaid Premium due for months prior to the termination shall be due and payable on the termination date.
2. The Company may terminate this Group Policy upon default in the payment of Premium by giving to the Policyholder 31 days prior written notice of such termination. Notice to the Policyholder shall state the amount of Premium due and the 31 day grace period for payment. Coverage under the Group Policy will remain in effect during the 31 day grace period. Payment of said sum prior to the date of intended termination shall continue this Group Policy in full force and effect. The Policyholder shall remain liable to the Company for Premiums accrued during the grace period. For purposes of this section, the Company will apply these default provisions to any separate billing locations of the Policyholder when the Policyholder elects to structure its Group with separate billing locations that are independently responsible for Premium payment.
3. The Company may terminate this Group Policy with 31 days advance notice if the number of Certificate Holders enrolled under this Group Policy totals less than the Company's required minimum participation.
4. The Company may also adjust the Premium or benefits with 31 days advance notice if the extent or nature of the risk changes significantly.
5. The Group Policy or coverage of a Member may be terminated immediately when there is fraud or misrepresentation by the Policyholder or Member respectively.
6. In the event of a breach by either party, other than for nonpayment of Premium, the other party may terminate this Group Policy by written notice to the breaching party. The breaching party has 31 days to fully cure the breach. If the breach is not cured within 31 days after written notice, this Group Policy will immediately terminate.
7. The Plan Administrator will have the right to terminate this Group Policy if the Company has engaged in a pattern of activity or practice that constitutes a material breach or violation of the Company's obligations regarding PHI under this Group Policy and, on notice of such material breach or violation from the Plan Administrator, fails to take reasonable steps to cure the breach or end the violation.

If the Company fails to cure the material breach or end the violation after the Plan Administrator's notice, the Plan Administrator may terminate this Group Policy by providing the Company written notice of termination setting forth the uncured material breach or violation serving as the basis for the termination and specifying the effective date of the termination.

8. Notwithstanding the above provisions, either the Company or the Policyholder may terminate this Group Policy with at least 31 days advance written notice. Any unpaid Premium due for months prior to the termination shall be due and payable on the termination date.

C. POLICYHOLDER OBLIGATIONS:

The Policyholder agrees, in addition to any other obligations contained herein, that it shall:

1. Have the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules and regulations, including any licensing, filing, reporting and disclosure requirements that may apply to the Plan. The Company will have no responsibility for or liability with respect to the Plan's compliance or noncompliance with any applicable federal, state or local law, rule or regulation.
2. By executing this Group Policy, the Plan Sponsor certifies to the Company that its Plan documents have been amended to incorporate the provisions required by and under federal law, and agrees to comply with the Plan Administrator's plan documents.

The Company may rely on Plan Sponsor's certification and Plan Administrator's written authorization, and will have no obligation to verify (1) that the Plan Administrator's plan documents have been amended to comply with the requirements of federal law or this Group Policy or (2) that the Plan Sponsor is complying with the Plan Administrator's plan document as amended.

3. Define its eligibility requirements for enrollment of Members under the Group Policy and communicate such requirements, including any changes, to Members. During the term of this Group Policy, no change in the Policyholder's eligibility requirements, participation requirements or renewal date shall be permitted to affect eligibility or enrollment unless such change is agreed to in advance by the Company.
4. Collect from its Certificate Holders any contribution toward the Premium and notify Certificate Holders of any change in such contribution. Pay in full when due the Premium specified in this Group Policy or renewal notice for this Group Policy for all enrolled Certificate Holders and Dependents, as reported to the Company. Unless otherwise agreed between the Policyholder and the Company or dictated by applicable law or regulation, Premium for Members who become ineligible during the course of this Group Policy is due through the end of such month in which they become ineligible.
5. Send accurate and timely enrollment data including additions, terminations and changes required by the Company to perform its duties under this Group Policy and to determine Premium rates. The Policyholder will be held liable for the cost of Claims incurred as a result of inaccurate enrollment data, or retroactive terminations of enrollment that exceed the guidelines of the Company. All records of the Policyholder that bear on the insurance including eligibility, enrollment and payment of Premium must be open to the Company for its inspection and to make copies at any reasonable time and with reasonable notice to the Policyholder.
6. Notify the Company as soon as possible when coverage is to be continued for ineligible Members under any state or federal law or regulation. It is the Policyholder's obligation to notify Certificate Holders and Dependents of their rights and any Premium due for continuation coverage as required by law.
7. Notify all Certificate Holders of the termination of the Group Policy. Coverage will be terminated regardless of whether the notice is given.

D. COMPANY OBLIGATIONS:

The Company or its authorized representative shall perform administrative functions necessary to ensure the provision of benefits for the Policyholder and its Members. Such functions may include, but are not limited to billing, processing Claims, providing a Certificate for Certificate Holders, responding to inquiries and complaints related to this Group Policy and maintaining records.

The Company does not disclose Claim or eligibility records except as allowed or required by law. The Company maintains physical, electronic and procedural safeguards to guard Claims and eligibility information from unauthorized access, use and disclosure. Claim records are owned by and are proprietary to the Company.

1. Privacy of Protected Health Information (PHI)

- a. The Company will keep confidential all Claim records and all other PHI the Company creates or receives in the performance of its duties under this Group Policy. Except as permitted or required by this Group Policy for the Company to perform its duties under this Group Policy, the Company will not use or disclose such Claim information or other PHI without the authorization of the Member who is the subject of such information or as required by law.
- b. The Company will neither use nor disclose Members' PHI (including any Members' PHI received from a business associate of the Plan) except (1) as permitted or required by this Group Policy, (2) as permitted in writing by the Plan Administrator, (3) as authorized by Members or (4) as required by law.
- c. The Company will be permitted to use or disclose Members' PHI only as follows:
 1. The Company will be permitted to use and disclose Members' PHI (a) for the management, operation and administration of the Plan that the Plan Administrator offers Members, and (b) for the services set forth in the Plan, which include payment activities, Health Care Operations, and Data Aggregation as these terms are defined under federal law. The Company also may de-identify PHI it obtains or creates in the course of providing services for the Plan Administrator.
 - (i) The Company will be permitted to use Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities.
 - (ii) The Company will be permitted to disclose Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities only if (i) the disclosure is required by law, or (ii) before the disclosure, the Company obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written Group Policy, that the entity will hold Members' PHI in confidence, use or further disclose Members' PHI only for the purposes for which the Company disclosed it to the entity or as required by law, and notify the Company of any instance the entity becomes aware of where the confidentiality of any Members' PHI was breached.
 2. The Company will make reasonable efforts to use, disclose or request only a limited data set where practical. Otherwise, the minimum necessary amount of Members' PHI to accomplish its intended purpose.

- d. Other than disclosures permitted by General Policy Rules (D.1.c), the Company will not disclose Members' PHI to the Plan Administrator or to the Plan's business associate except as directed by the Plan Administrator in writing.
- e. The Company will require each subcontractor and agent to which the Company is permitted by this Group Policy or in writing by the Plan Administrator to disclose Members' PHI to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Members' PHI as this Group Policy applies to the Company.
- f. The Company will not disclose any Members' PHI to the Plan Sponsor, except as permitted by and in accordance with General Policy Rules (D.1.c).
- g. Disposition of Protected Health Information.

The parties agree that upon termination, cancellation, expiration or other conclusion of this Group Policy, the Company will return or destroy all PHI received or created by the Company on the Plan Administrator's behalf as soon as feasible. Due to various regulatory and legal requirements, the Plan Administrator acknowledges that immediate return or destruction of all such information is not feasible. The Company agrees that upon conclusion of this Group Policy for any reason, it will use or disclose the PHI it received or created on the Plan's behalf only as necessary to meet the Company's regulatory and legal requirements and for no other purposes unless permitted in writing by the Plan Administrator. The Company will destroy PHI received or created by the Company on the Plan Administrator's behalf that is in the Company's possession under such circumstances and upon such schedule as the Company deems consistent with its regulatory and other legal obligations.

- 1. The Company will meet all obligations imposed upon it by the HIPAA Privacy Rule.

2. Information Safeguards

- a. The Company will maintain reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of Member PHI. The safeguards must reasonably protect Member PHI from any intentional or unintentional use or disclosure in violation of federal law and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Group Policy.
- b. The Company will implement administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI the Company creates, receives, maintains or transmits on behalf of the Plan Administrator as required by federal law.

3. Inspection of Books and Records

- a. The Company will make its internal practices, books and records relating to its use and disclosure of PHI created or received for or from the Plan Administrator available to the U.S. Department of Health and Human Services to determine compliance with federal law or this Group Policy.
- b. The Company will prepare and distribute a notice of privacy practices appropriate for the Plan to meet its notice obligations under federal law. The Plan Administrator authorizes the Company to disclose the minimum necessary PHI to the Plan Sponsor for Plan Administration functions specified in the Plan documents as amended.

4. Information Privacy and Safeguard Provisions Survive Termination of Group Policy

These responsibilities agreed to by the Company and related to protecting the privacy of PHI, as well as any terms directly related thereto, shall survive the termination of this Group Policy and where applicable, shall govern the Company's receipt and use of PHI obtained pursuant to the terms of this Group Policy.

E. GENERAL PROVISIONS:

1. Where federal law is not applicable, this Group Policy shall be governed by the laws of the state of North Dakota.
2. This Group Policy consists of the attached Certificate, Schedule of Benefits and amendments to the previously mentioned forms and represents the entire agreement between the Policyholder and the Company with respect to the subject matter. The failure of any section or subsection of this Group Policy shall not affect the validity, legality and enforceability of the remaining sections hereof.
3. The provisions of the Certificate and all of its Schedule of Benefits issued to amend this Group Policy after its Effective Date are made a part of this Group Policy.
4. Except as otherwise herein provided, each amendment to this Group Policy, including a change in the Premium or benefits, shall be proposed by the Company to the Policyholder at renewal and in writing. Except as otherwise provided herein, each amendment shall become effective on the date this Group Policy renews in accordance with General Policy Rules (B).
5. An amendment mutually agreed to by both parties can be proposed at any time by either party in writing to the other with the advance notice indicated on the first page of this Group Policy. The effective date must be mutually agreed to by both parties. Payment of Premium will confirm acceptance of amendment. A change in the Group Policy may be made at any time without mutual agreement of the parties if the change is necessary to satisfy the requirements of any state or federal law applicable to the Group Policy. An amendment will not affect a Claim incurred prior to the effective date of the change.
6. Only a duly designated officer of the Company has the authority to: (a) waive any conditions or restrictions of the Group Policy; (b) extend the time in which a Premium may be paid; (c) make or change a contract; and (d) bind the Company by a promise or representation or by information given or received. An agent of the Company is not an officer. No agent has such authority.
7. The Plan Administrator agrees to abide by all underwriting requirements established by the Company as these underwriting requirements relate to, including but not limited to, rating factors, the minimum participation of eligible Members, minimum employer contributions, reporting employer contribution rates and provider network restrictions, as permitted and restricted under federal and/or state laws.
8. The Company will provide formal policy and procedure guidelines to the Plan Administrator for the conduct of external audits or reviews commissioned by the Plan Administrator. The Company shall cooperate with all external audit or review teams.

The Plan Administrator shall provide the Company with the scope and requirements of any audit or review prior to the commencement of the audit or review. If a sample of Claims is required, the Company will provide the Plan Administrator with a statistically valid computerized sample of Claims.

All audit or review findings shall be discussed with the Company upon discovery to allow further investigation or implementation of corrective action.

All Member records shall be kept confidential and considered proprietary. Such records shall be available for audit or review only after disclosure statements have been signed by the external audit or review team to ensure the information remains confidential and is utilized for the stated purpose only. If any records are removed from the Company's office for purposes of the audit or review, approval must be granted. All records will be subject to the minimum necessary requirements.

9. The Plan Administrator hereby expressly acknowledges and understands that BCBSND is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting BCBSND to use the Blue Cross and Blue Shield Service Marks in the state of North Dakota, and that BCBSND is not contracting as an agent of the Association. The Plan Administrator further acknowledges and agrees this Group Policy was not entered into based upon representations by any person or entity other than BCBSND and that no person, entity, or organization other than BCBSND shall be held accountable or liable to the Plan Administrator for any of BCBSND's obligations to the Plan Administrator created under this Group Policy. This paragraph shall not create any additional obligations whatsoever on the part of BCBSND other than those obligations created under other provisions of this Group Policy.
10. It shall be the sole responsibility of the Plan Administrator to distribute Certificates to Certificate Holders of the Plan and to advise Members of their rights under ERISA, including, but not limited to Claims appeals procedures. In the event a Claim is paid due to the Certificate not being distributed to the Certificate Holder, the Plan Administrator shall be liable for all such Claims. The Certificate is not the Summary Plan Description but contains some of the information that the Plan Administrator may deem essential for inclusion in the Summary Plan Description. The Plan Administrator has the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules and regulations, including the creation and distribution of a Summary Plan Description.
11. If the Plan Administrator has a digital or online version of the Certificate available to its employees, the Plan Administrator agrees that it will not alter, modify or change the language of the Certificate, and further agrees the Certificate, attached as Exhibit A, will be the controlling document in the event of any conflict or liability that might arise as the result of any alterations, modifications or changes made by the Plan Administrator. In the event a Claim is paid based on the Plan Administrator's digital or online Certificate, the Plan Administrator is liable for all such Claims. The Plan Administrator further agrees that no waiver of this Group Policy is valid unless in writing and approved by the Company.
12. Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Group Policy, this Group Policy will automatically amend such that the obligations imposed on the Plan Sponsor, the Plan Administrator and the Company remain in compliance with such regulations, unless the Company elects to terminate this Group Policy by providing the Plan Sponsor and the Plan Administrator notice of termination in accordance with this Group Policy at least 31 days before the Effective Date of such final regulation or amendment to final regulations.

13. Any notice required under this Group Policy shall be in writing and shall be effective when delivered in person or sent by certified mail to a party at its respective address. Notices to the Company shall be sent to:

**Attention: President and CEO
Blue Cross Blue Shield of North Dakota
4510 13th Avenue South
Fargo, North Dakota 58121**

F. INDEMNIFICATION CLAUSE:

Each party agrees to indemnify and hold harmless the other party for all causes of action, suits, claims, judgments, settlements, liabilities, damages of any kind, penalties, losses, expenses, court costs and attorneys' fees resulting from or arising out of any duty under this Group Policy, if the liability was the consequence of the actions of the indemnifying party.

G. BINDING EFFECT:

This Group Policy shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Exhibit "A"



Inspections Office

Fargo City Hall
225 Fourth Street North
Fargo, ND 58102
Phone: 701.241.1561
Fax: 701.476.6779
www.FargoND.gov



Memorandum

DATE: February 03, 2022
TO: Mayor Mahoney and Board of City Commissioners
FROM: Shawn Ouradnik, Inspections Director and Secretary, Board of Appeals
SUBJECT: 2021 International Codes Adoption and recommended motion

Mayor and Commissioners, please accept this as the report from your Board of appeals regarding the adoption of the 2021 international codes for use within Fargo's jurisdiction.

Every three years your Board's task is to review the newest available codes, hold public hearings on the same and report its recommendation to you. This is that report. Your Board has conducted public hearings on these codes since early June 2021. At these hearings inspections and fire staff presented significant changes to these codes making recommendations during the hearings. Your board took into account these staff recommendations as well as public input gathered from the hearings to formulate its recommendation to you. These are incorporated into the respective sets of amendments to the separate codes.

Your board recommends adoption of the 2021 editions of the International Fire Code, International Building Code, International Residential Code, International Mechanical Code, International Fuel Gas Code, International Property Maintenance Code and International Existing Building Code together with the amendments to each which you will find accompanying this report. You may notice we have not included the International Energy Code at this time. We are still gathering information and public input on that code for a future recommendation. Considering the time it takes the attorneys office to prepare the ordinance we wanted to get started on the codes we have reviewed.

Thank you for this opportunity to serve in this capacity for our community.

Suggested motion: **Receive and file this report and direct the city attorney to prepare the necessary ordinances for adoption of these codes together with the recommended amendments thereto.**

Proposed Amendments to the 2021 International Fire Code

1. Section 101.1 is amended to read as follows:

101.1 Title. These regulations shall be known as the *Fire Code* of ~~[NAME OF JURISDICTION]~~ the city of Fargo, hereinafter referred to as “this code.”

2. Section 102.6 is amended to read as follows:

102.6 Historic buildings. The provisions of this code relating to the construction, *alteration*, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local jurisdiction as historic buildings where such buildings or structures do not constitute a distinct hazard to life or property. Fire protection in designated historic buildings shall be provided with an *approved* fire protection plan. ~~as required in Section 1103.1.1.~~

3. Section 103.1 is amended to read as follows:

103.1 Creation of Agency. The ~~[INSERT NAME OF DEPARTMENT]~~ Fargo Fire Department is hereby created and the official in charge thereof shall be known as the fire code official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

4. Section 104.7 is amended to read as follows:

104.7 Liability. The fire code official, member of the board of appeals, officer or employee charged with the enforcement of this code, while acting for the jurisdiction, in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered civilly or criminally liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

5. **Section 105.5.1** is hereby deleted in its entirety.

6. Table 105.5.9 is amended to read as follows:

Table 105.5.9 Permit Amounts for Compressed Gases.

Carbon dioxide used in carbon dioxide enrichment systems ~~875 (100 lbs)~~ 4375 (500 lbs.)

Carbon dioxide used in insulated liquid carbon dioxide beverage dispensing applications
~~875 (100 lbs)~~ 4375 (500 lbs.)

7. **Section 105.5.14** is hereby deleted in its entirety.

8. **Section 105.5.15** is hereby deleted in its entirety.

9. **Section 105.5.18 Subsection 2** is hereby amended in part to read as follows:

2. To store, handle or use Class 1A liquids in excess of ~~5~~ 30 gallons, Class 1B liquids in excess of 60 gallons, Class 1C liquids in excess of 90 gallons (~~49 L~~) in a building or ~~in excess of 10 gallons (37.9 L)~~ outside of a building, except that a permit is not required for the following:

10. **Section 105.5.18 Subsection 3** is hereby amended to read as follows:

To store, handle or use Class II or Class IIIA liquids in excess of ~~25~~ 120 gallons (~~95 L~~) in a building or in excess of ~~60~~ 120 gallons (~~227 L~~) outside a building, except for fuel oil used in connection with oil-burning equipment.

11. **Section 105.5.19** is hereby deleted in its entirety.

12. **Section 105.5.25 Subsections 1, 5, and 6** of are hereby deleted in their entirety.

13. **Section 105.5.31** is hereby deleted in its entirety.

14. **Section 105.5.32** is hereby deleted in its entirety.

15. **Section 105.5.33** Motor fuel-dispensing facilities is hereby deleted in its entirety.

16. **Section 105.5.36** is amended to read as follows:

105.5.36 Open flames and candles. An operational permit is required to use open flames or candles in connection with assembly areas, dining areas of restaurants or drinking establishments. For purposes of this provision, churches shall not be deemed to be assembly areas and shall not be required to obtain a permit to utilize candles in religious ceremonies.

17. **Section 105.5.38 Outdoor assembly event.** Is hereby deleted in its entirety.

18. **Section 105.5.40 Plant extraction systems** is hereby deleted in its entirety
19. **Section 105.5.44** is amended to read as follows:
105.5.44 Refrigeration equipment. An operational permit is required to operate a mechanical refrigeration unit or system regulated by Chapter 6 containing more than 30 pounds of Group A3, B2, or B3 refrigerant.
20. **Section 105.5.45** is amended to read as follows:
105.5.45 Repair garages and ~~motor fuel dispensing facilities~~. An operational permit is required for operation of repair garages.
21. **Section 105.5.49** is amended to read as follows:
Section 105.5.49 Temporary membrane structures and tents. An operational permit is required to operate an air-supported temporary membrane structure, a temporary special event structure, or a tent having an area in excess of 400 square feet (37m²) for the purposes of assembly.
22. **Section 105.6.2** is hereby deleted in its entirety.
23. **Section 105.6.5** is hereby deleted in its entirety.
24. **Section 105.6.7** is hereby deleted in its entirety.
25. **Section 105.6.10** is hereby deleted in its entirety.
26. **Section 105.6.11** is hereby deleted in its entirety.
27. **Section 105.6.12** is hereby deleted in its entirety.
28. **Section 105.6.13** is hereby deleted in its entirety.
29. **Section 105.6.15** is hereby amended to read as follows:
105.6.15 LP-gas. A construction permit is required for installation of or modification to an LP-gas system with a single container in excess of 2000 gallons water capacity or the aggregate capacity of containers is more than 4000 gallons in water capacity.

- 30. **Section 105.6.16** is hereby deleted in its entirety.
- 31. **Section 105.6.17** is hereby deleted in its entirety.
- 32. **Section 105.6.18** is hereby deleted in its entirety.
- 33. **Section 105.6.19** is hereby deleted in its entirety.
- 34. **Section 105.6.20** is hereby deleted in its entirety.
- 35. **Section 105.6.21** is hereby deleted in its entirety.
- 36. **Section 105.6.23** is hereby deleted in its entirety.
- 37. **Section 105.6.24** is hereby deleted in its entirety.

- 38. Section 106.4 is hereby amended as follows:

106.4 Retention of construction documents. One set of construction documents shall be retained by the fire code official for a period of not less than 180 days from date of completion of the permitted work, or as required by state or local laws. ~~One set of approved construction documents shall be returned to the applicant, and said set shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.~~

- 39. **Section 112.4** is amended in part to read as follows:

112.4 Violation penalties.

~~....shall be guilty of an [SPECIFY OFFENSE] infraction, punishable by a fine of not more than [AMOUNT] dollars or by imprisonment not exceeding [number of days], or both such fine and imprisonment.~~ Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

- 40. **Section 307.1.1** is amended to read as follows:

307.1.1 Prohibited open burning. *Open burning* shall be prohibited when atmospheric conditions or local circumstances make such fires hazardous. All open burning, including recreational fires, is banned when the fire index is at the high, very high or extreme level and any time during a red flag warning.

41. **Section 308.1.4** is amended to read as follows:

308.1.4 Open-flame cooking devices. Charcoal burners and other open-flame cooking devices shall not be operated on combustible balconies or decks or within 10 feet (3048 mm) of combustible construction.

Exceptions:

1. One- and two-family *dwelling*s.
2. Where buildings, balconies and decks are protected by an *automatic sprinkler system*.
3. LP-gas cooking devices having LP-gas container with a water capacity not greater than ~~2 ½ pounds [nominal 1 pound (0.454 kg)]~~ 47.8 pounds [nominal 20 pounds (9 kg) LP-gas capacity].

42. **Section 308.3** is amended by adding the following subsection 1.4 to exception 1:

308.3 Group A Occupancies. Open-flame devices shall not be used in a Group A occupancy.

Exceptions:

1. Open-flame devices are allowed to be used in the following situations, provided *approved* precautions are taken to prevent ignition of a combustible material or injury to occupants:
 - 1.4 Open-flame devices for food warming.

43. **Section 319.4** is hereby amended to read as follows:

319.4 Fire protection. Fire Protection shall be provided in accordance with Sections ~~319.4.1~~ and 319.4.2.

44. **Section 319.4.1** is hereby deleted in its entirety.

45. **Section 503.4** is amended to read as follows:

503.4 Obstruction of fire apparatus access roads. Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Section 503.2.1 and 503.2.2 shall be maintained at all times. Enforcement of such prohibited parking may be accomplished in the same manner as regulations contained in Article 8-10 and in Section 9-0705 of the Fargo Municipal Code.

46. **Section 507.5.4 Obstruction** is amended to read as follows:

507.5.4 Obstruction. Unobstructed access to fire hydrants shall be maintained at all times. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants. An approved hydrant marker shall be installed immediately adjacent to the rear of the hydrant.

47. **Section 806.1.1** is amended by adding the following exception:

3. For purposes of this provision, churches shall not be deemed public buildings and may utilize natural or resin bearing cut trees in the altar area of the church. No electric lighting is allowed on the tree.

48. **Section 903.3.1** is amended to read as follows:

903.3.1 Standards. Sprinkler systems shall be designed with a 5 psi safety margin and installed in accordance with Sections 903.3.1.1, 903.3.1.2 or 903.3.1.3 and other chapters of this code, as applicable.

49. **Section 903.3.1.1.1 Exempt locations** is amended by adding the following exception:

7. Elevator machine room and machinery spaces. Where sprinklers are not installed in elevator machine rooms, shunt trip required in accordance with IBC 3005.5 shall not be installed.

50. **Section 903.3.5 Water Supplies** is amended to read as follows:

903.3.5 Water supplies. Water supplies for automatic sprinkler systems shall comply with this section and the standards referenced in Section 903.3.1. The potable water supply shall be protected against backflow in accordance with the requirements of this section and the International Plumbing Code. For connections to public waterworks systems, the water supply test used for design of fire protection systems shall be adjusted to account for seasonal and daily pressure fluctuations based on information from the water supply authority and as approved by the fire code official. Underground water supply piping shall be constructed of a material allowed by Fargo Municipal Code Chapter 16 and Chapter 22 and shall be allowed to extend into the building through the slab or wall not more than 24 inches.

51. **Section 905.1.1** is amended by adding the following:

Section 905.1.1 Standpipe Hose. The installation of fire hose on standpipes may be omitted when approved by the fire code official. Approved standpipe hose valves and connections shall be provided where required.

52. **Section 907.8.3** is hereby deleted in its entirety.

53. **Section 1009.8.1** is hereby amended to read as follows:

1009.8.1 System requirements. Two-way communication systems shall provide communication between each required location and the fire command center or a central control point location *approved* by the fire department. Where the central control point is not constantly attended, a two-way communication system shall have a timed automatic telephone dial-out capability to a monitoring location ~~or 9-1-1~~. The two-way communication system shall include both audible and visible signals.

54. **Section 1011.1** Exceptions are hereby amended to read as follows:

1. Within rooms or spaces used for assembly purposes, stepped *aisles* shall comply with Section 1030.
2. A stairway complying with section 1011 except where in a B, F, M, S or U that serves an area of 750 sf or less, and is not open to the public, that has a maximum riser height of 8 inches and a minimum tread depth of 9 inches, has a minimum width of 36 inches and has at least one handrail that terminates at the top and bottom riser and otherwise complies with section 1014.

55. **Exception 3, 6 of Section 1011.5.2** is amended in part to read as follows:

3. In Group R-3 occupancies; within dwelling units in Group R-2 occupancies; and in Group U occupancies that are accessory to a Group R-3 occupancy or accessory to individual dwelling units in Group R-2 occupancies; the maximum riser height shall be ~~7 3/4 inches (197 mm)~~ 8 inches; the minimum tread depth shall be ~~10 inches (254 mm)~~ 9 inches;

6. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public are permitted to have a maximum 8 inch riser height and minimum 9 tread depth.

56. **Chapter 11** is hereby deleted with the exception of Sections 1103.8 and 1103.9.

57. **Section 2303.1** is amended by adding the following Subsection 7:

7. On new installations, dispensing devices used to fill portable containers with home heating fuels shall not be located on the same island where Class I liquids are dispensed.

58. **Section 2306.1** is amended to read as follows:

2306.1 General. Storage of flammable and combustible liquids shall be in accordance with Chapter 57 and Sections 2306.2 through 2306.6.3. See also Fargo Municipal Code, Section 9-0604.

59. **Section 3106.2 General** is amended to read as follows:

3106.2 General. Outdoor assembly events with planned attendance exceeding 1,000 people shall be in accordance with this section and Section 403.12. Temporary structures erected for outdoor assembly events shall comply with this chapter.

60. **Section 3303.1** is amended to read as follows:

3303.1 Program development and maintenance. The *owner* or *owner's* authorized agent shall be responsible for the development, implementation and maintenance of an *approved*, written *site safety plan* establishing a fire prevention program at the project site applicable throughout all phases of the construction, repair, *alteration* or demolition work. When required by the fire code official, the plan shall be submitted and *approved* before a building permit is issued,

61. **Section 5704.2.9.6.1** is amended to read as follows:

5704.2.9.6.1 Locations where above-ground tanks are prohibited. Storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited within the limits established by law as the limits of districts in which such storage is prohibited. Above-ground tanks, with a capacity exceeding 660 gallons, outside of buildings shall be installed only in areas zoned industrial or limited industrial and shall be located at least 300 feet from all non-industrial zoned districts. Above-ground tanks outside of buildings in all non-industrial zoned districts shall not exceed 660 gallons in individual capacity or 1,320 gallons in aggregate capacity, and tanks outside of buildings used for dispensing shall be listed and labeled as protected above-ground tanks in accordance with UL 2085.

62. **Section 5704.2.13.1.4** is amended by adding the following Subsection 7 to:

7. Site assessment is required to determine if there are any spills, leaks, or discharge from the tank system. Records of site assessment shall be kept on the site of tank location.

63. The exception to Section **5705.3.7.5.1** is amended to read as follows:

Exception: 1. Where natural ventilation can be shown to be effective for the materials used, dispensed or mixed.
2. When approved by the chief, continuous ventilation may be provided for one complete air change per hour, if supplemented with mechanical ventilation designed to provide for a complete air change six times per hour. The non-continuous ventilation equipment and any lighting fixtures shall be operated by the same switch located outside of the door.

64. **Section 5806.2** is amended to read as follows:

5806.2 Limitations Storage of flammable *cryogenic fluids* in stationary containers outside of buildings is prohibited within the limits established by law as the limits of districts in which such storage is prohibited. Stationary containers shall be installed only in areas zoned industrial or limited industrial and shall be located at least 300 feet from all non-industrial zoning districts.

65. Section 6103.2.1.6 is amended to read as follows:

6103.2.1.6 Use with self-contained torch assemblies. Portable LP-gas containers are allowed to be used to supply *approved* self-contained torch assemblies or similar appliances. Such containers shall not exceed a water capacity of ~~2 ½ pounds (1 kg)~~ 12 pounds.

66. Section 6104.2 is amended to read as follows:

6104.2 Maximum capacity within established limits. Within the limits established by law restricting the storage of liquefied petroleum gas for the protection of heavily populated or congested areas, the aggregate capacity of any one installation shall not exceed 2,000 gallons (7570 L). Unprotected tanks with a water capacity exceeding 2,000 gallons shall be installed only in areas zoned industrial or limited industrial and shall be located at least 300 feet from all non-industrial zoning districts.

67. Appendix B "**Fire-Flow Requirements for Buildings**" is adopted and enacted in its entirety.
68. Appendix C "**Fire Hydrant Locations and Distribution**" is adopted and enacted in its entirety.
69. Appendix D "**Fire Apparatus Access Roads**" is adopted and enacted in its entirety.
70. D103.1 is hereby deleted in its entirety.

2021 IRC Amendments

Section R101.1 is hereby amended to read as follows:

R101.1 Title. These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of ~~[NAME OF JURISDICTION]~~ the City of Fargo, and shall be cited as such and will be referred to herein as "this code."

Section R104.8 is hereby amended to read as follows:

R104.8. Liability. The building official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered civilly or criminally liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section R104.8.1 is hereby amended to read as follows:

R104.8.1 Legal defense. Any suit or criminal complaint instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the immunities and defenses provided by other applicable local, state or federal laws and shall be defended by legal representatives of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted

Section R104.10.1 is hereby deleted in its entirety.

Section R105.2 is hereby amended to read as follows:

R105.2 Work exempt from permit. Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the

provisions of this code or any other laws or ordinances of this jurisdiction. _Permits shall not be required for the following:

Building:

1. One-story detached accessory structures, provided the floor area does not exceed ~~200 (18.58m²)~~ 120 square feet.
2. Fences not over ~~7 (2134 mm)~~ 8.5 feet high.
* * *
7. ~~Prefabricated~~ Swimming pools that are less than 24 inches (610 mm) deep.
* * *
10. Decks not exceeding ~~200 (18.58 m²)~~ 120 square feet in area, that are not more than ~~30 (762mm)~~ 7 inches above grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R311.4.

Section R105.3.1.1 is hereby deleted in its entirety.

Section R106.1.4 is hereby deleted in its entirety.

Section R106.4 is hereby deleted in its entirety.

Section R108.3 is amended to read as follows:

R108.3 Building permit valuations. Building *permit* valuation shall include total value of the work for which a *permit* is being issued, such as electrical, gas, mechanical, plumbing equipment and other permanent systems, including materials and labor. If, in the opinion of the *building official*, the valuation is underestimated on the application, the *permit* shall be denied, unless the applicant can show detailed estimates to meet the approval of the *building official*. Final building *permit* valuation shall be set by the *building official*.

Section R201.3 is hereby amended to read as follows:

R201.3 Terms defined in other codes. Where terms are not defined in this code such terms shall have meanings ascribed to them as in other code publications of the International Code Council. Wherever the term 'International Plumbing Code' and/or 'International Private Sewage Disposal Code' is used in the International Residential Code, it shall mean the North Dakota State Plumbing Code. Wherever the term 'ICC Electrical Code' is used in the International Residential Code, it shall mean the National Electrical Code together with the North Dakota State Wiring

Standards. Wherever reference is made to flood plain requirements, it shall mean the Fargo Flood Plain Management Ordinance together with the Fargo Flood Proofing Code (Fargo Municipal Code Article 21-06).

Section R301.2.4 is hereby deleted in its entirety.

Table R301.2 Climatic and geographic design criteria is hereby amended to read as follows

Table 301.2(1)

Climatic and Geographic Design Criteria

Climate and Geographic Design Criteria													
Ground Snow Load	Wind Design				Seismic Design Category	Subject to Damage From			Winter Design Temp	Ice Underlayment Required	Barrier Flood Hazards	Air Freezing Index	Mean Annual Temp
	Speed (mph)	Topographic Effects	Special Wind Region	Windborne Debris Zone		Weathering	Frost Line Depth	Termite					
50	115	No	No	No	Zone A	Severe	4.5'	None	-18°	Yes	1976	4000	41.5°
Manual J Design Criteria													
Elevation	Latitude	Winter Heating	Summer Cooling	Altitude Correction Factor	Indoor Temperature	Design Cooling	Temperature	Heating Temperature Difference					
859	46	-17°	88°	None	70°	75°		87°					
Cooling Temperature Difference	Wind Velocity Heating	Wind Velocity Cooling	Coincident Wet Bulb	Daily Range	Winter Humidity	Summer Humidity							
13°	15 mph	7.5 mph	70	M	30%	50%							

Table R302.1(1) Exterior Walls. The fourth column is hereby amended as follows:

0 feet
 $\geq 5 \frac{3}{4}$ feet
 < 2 feet
 ≥ 2 feet to $\leq 5 \frac{3}{4}$ feet
 $\geq 5 \frac{3}{4}$ feet
 < 3 feet
 3 feet
 5 feet
 < 3 feet
 3 feet

Section R302.5.1 is hereby amended to read as follows:

R302.5.1 Opening Protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than $1\frac{3}{8}$ inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than $1\frac{3}{8}$ inches (35 mm) thick, or 20-minute fire-rated doors, ~~equipped with a self-closing device or automatic-closing device.~~

Section R307.1 is hereby amended to read as follows:

Section R307.1 Space required. Fixtures shall be spaced in accordance with the requirements of the North Dakota State Plumbing Code and Figure R307.1, and in accordance with the requirements of Section P2705.1 with the exception of the clearance in front of the water closets and bidets which shall be at least 24 inches.

Section R309.3 is hereby deleted in its entirety.

Section R310.2.2 is hereby amended to read as follows:

R310.2.2 Window sill height. Where a window is provided as the emergency escape and rescue opening, it shall have a sill height of not more than 44 inches (1118 mm) above the floor; where the sill height is below grade, it shall be provided with a window well in accordance with Section R310.2.3. Sill height shall be measured from the finished floor to the bottom of the clear opening.

Section R310.2.3.1 is hereby amended to read as follows:

R310.2.3.1 Ladder and steps. Window wells with a vertical depth greater than 44 inches (1118 mm) shall be equipped with a permanently affixed ladder or steps usable with the window in the fully open position, or shall be equipped with a permanently-attached platform at least 30 inches by 16 inches. The maximum distance between the top of the window well and a platform shall be 42 inches and shall not impede the operation of the window. Ladders or steps required by this section shall not be required to comply with Sections R311.7. Ladders or rungs shall have an inside width of not less than 12 inches (305 mm), shall project not less than 3 inches (76 mm) from the wall and shall be spaced not more than 18 inches (457 mm) on center vertically for the full height of the window well.

Exception: Terraced window wells with a maximum of 24 inches per vertical rise and minimum of 12 inches per horizontal projection on each level shall also be allowed.

Section R311.3 Exceptions are hereby amended to read as follows:

R311.3 Floors and landings at exterior doors. ***

Exceptions:

1. Exterior balconies less than 60 square feet (5.6 m²) and only accessible from a door are permitted to have a landing less than 36 inches (914 mm) measured in the direction of travel.
2. A landing is not required on the outside of exterior doors other than the required egress door, where a stairway with a total rise of less than 30 inches (762 mm) is located on the exterior side of the door, provided the door does not swing over the stairway.

Section R311.3.1 is hereby amended to read as follows:

R311.3.1 Floor elevations at the required egress doors. Landings or finished floors at the required egress door shall not be more than 1½ inches (38 mm) lower than the top of the threshold.

Exception: The landing or floor on the exterior side shall not be more than ~~7¾ (196 mm)~~ 8 inches below the top of the threshold provided the door does not swing over the landing or floor.

Where exterior landings or floors serving the required egress door are not at grade, they shall be provided with access to grade by means of a ramp in accordance with Section R311.8 or a stairway in accordance with Section R311.7.

Section R311.3.2 is hereby amended to read as follows:

R311.3.2 Floor elevations for other exterior doors. Doors other than the required egress door shall be provided with landings or floors not more than ~~7¾ (196 mm)~~ 8 inches below the top of the threshold.

Exception: A top landing is not required where a stairway ~~of not more than two risers~~ with a total rise of less than 30 inches (762 mm) is located on the exterior side of the door, provided that the door does not swing over the stairway.

Section R311.7.5.1 is hereby amended to read as follows:

R311.7.5.1 Riser height. The riser height shall be not more than ~~7¾ (196 mm)~~ 8 inches (196 mm). ***

Section R311.7.5.2 is hereby amended to read as follows:

R311.7.5.2 Treads. The tread depth shall be not less than ~~10 (254 mm)~~ 9 inches. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of

adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

Exception: Where a landing is not provided or required by sections R311.3, R311.3.2, or R311.7.6, the top tread of a stair serving exterior doors other than the required exit door, and in-swinging doors opening into an attached garage, shall be permitted to exceed the smallest tread by more than 3/8 inch (9.5mm). Such a tread shall be at least 18 inches (457mm) measured in the direction of travel.

Section R311.7.5.2.1 is hereby amended to read as follows:

R311.7.5.2.1 Winder treads. Winder treads shall have a tread depth of not less than ~~10 (254 mm)~~ 9 inches measured between the vertical planes of the foremost projection of adjacent treads at the intersections with the walkline. ***

Section R311.7.6 exceptions are hereby amended to read as follows:

R311.7.6 Landings for stairways. There shall be a floor or landing at the top and bottom of each stairway. ***

Exceptions:

1. A floor or landing is not required at the top of an interior flight of stairs, including stairs in an enclosed garage, provided a door does not swing over the stairs.
2. A landing is not required at the top of an exterior flight of stairs with a total rise of less than 30 inches, provided the door does not swing over the stairway.

Section R312.1.1 is hereby amended to read as follows:

Section 312.1.1 Where Required. Guards shall be provided for those portions of open-sided walking surfaces, including stairs, ramps, and landings, that are located more than 30 inches (762mm) measured vertically to the floor or grade below at any point or to the bottom of any window well within 36 inches (914mm) horizontally to the edge of the open side. Insect screening shall not be considered as a guard.

Section R313.1 is amended to read as follows:

R313.1 Townhouse automatic fire sprinkler systems. An automatic residential sprinkler system shall be installed in *townhouses* where the townhouses are located on a private street or private fire department access road that is required to be greater than 150 feet in length as required by Section 503 of the International Fire Code.

Section R313.2 is hereby deleted in its entirety.

Section R322 is hereby deleted in its entirety.

Section 326 is hereby deleted in its entirety.

Section R401.1 is hereby amended to read as follows:

R401.1 Application. The provisions of this chapter shall control the design and construction of the foundation and foundation spaces for buildings. In addition to the provisions of this chapter, the design and construction of foundations in flood hazard areas as established by Table R301.2(1) shall meet the provisions of Section R322 the Fargo Floodproofing Code (Article 21-06) and any other applicable requirements of the City of Fargo. Wood foundations shall be designed and installed in accordance with AWC PWF.

Section R401.3 is hereby amended to read as follows:

R401.3 Drainage. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a hazard. Lots shall be graded to drain surface water away from foundation walls. The grade shall fall not fewer than 6 inches (152mm) within the first 10 feet (3048mm).

~~**Exception:** Where lot lines, walls, slopes or other physical barriers prohibit 6 inches (152mm) of fall within 10 feet (3048mm), drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within 10 feet (3048mm) of the building foundation shall be sloped not less than 2 percent away from the building.~~

Section R403.1.4.1, Exceptions 1, 2 and 3, are hereby amended to read as follows:

R403.1.4.1 Frost protection

Exceptions:

1. Protection of freestanding accessory structures ~~with an area of 600 square feet (56 m²) or less,~~ of light-frame construction, ~~with an eave height of 10 feet (3048 mm) or less~~ shall not be required.

2. Protection of freestanding, accessory structures with an area of 400 square feet (37 m²) or less, of other than light-frame construction, ~~with an eave height of 10 feet (3048 mm) or less~~ shall not be required.
3. Decks ~~not supported by a dwelling~~ need not be provided with footings that extend below the frost line.

Section R404.1.3.2 is hereby amended to read as follows:

R404.1.3.2 Reinforcement for foundation walls. Concrete foundation walls shall be laterally supported at the top and bottom. Horizontal reinforcement shall be provided in accordance with Table R404.1.2(1). Vertical reinforcement shall be provided in accordance with Table R404.1.2(2), R404.1.2(3), R404.1.2(4), R404.1.2(5), R404.1.2(6), R404.1.2(7), or R404.1.2(8), or Table R404.1.2(10) and Figure R404.1.2(1) or Table R404.1.2(11) and R404.1.2(2). ***

Table R404.1.2(10) is hereby adopted as follows:

Table R404.1.2(10)
Foundation Wall Reinforcing
Active Pressure = 45pcf

Minimum Reinforcement for Concrete Foundation Walls		
Wall Height (h) feet	Wall Thickness (t) inches	Vertical Reinforcing
8	8	#4 @ 24" o.c. #5 @ 40" o.c.
	10	#4 @ 30" o.c. #5 @ 50" o.c.
9	8	#4 @ 18" o.c. #5 @ 28" o.c.
	10	#4 @ 24" o.c. #5 @ 36" o.c.
10	10	#4 @ 16" o.c.

		#5 @ 26" o.c.
--	--	---------------

Notes:

1. Chart is based on an active soil pressure of 45 pounds per cubic foot (pcf).
2. Reinforcing steel shall be ASTM A615 Fy – 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c^1 = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately braced and the concrete floor slab is in place or the wall is adequately braced.

Table R404.1.2(11) is hereby adopted as follows:

Table R404.1.2(11) Foundation Wall Reinforcing
Active Pressure = 65 pcf

Minimum Reinforcement for Concrete Foundation Walls		
Wall Height (h) Feet	Wall Thickness (t) inches	Vertical Reinforcing
8	8	#4 @ 18" o.c. #5 @ 26" o.c. #6 @ 40" o.c.
	10	#4 @ 24" o.c. #5 @ 36" o.c. #6 @ 52" o.c.
9	8	#4 @ 12" o.c. #5 @ 18" o.c. #6 @ 26" o.c.
	10	#4 @ 16" o.c. #5 @ 24" o.c. #6 @ 36" o.c.
10	10	#4 @ 12" o.c. #5 @ 18" o.c.

		#6 @ 24" o.c.
--	--	---------------

Notes:

1. Chart is based on an active soil pressure of 65 pounds per cubic foot (pcf).
2. Reinforcing steel shall be ASTM A615 Fy – 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c^1 = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately braced and the concrete floor slab is in place or the wall is adequately braced.

Figures R404.1.2(1) and R404.1.2(2) are adopted as shown:

FIGURE R404.1.2(1)

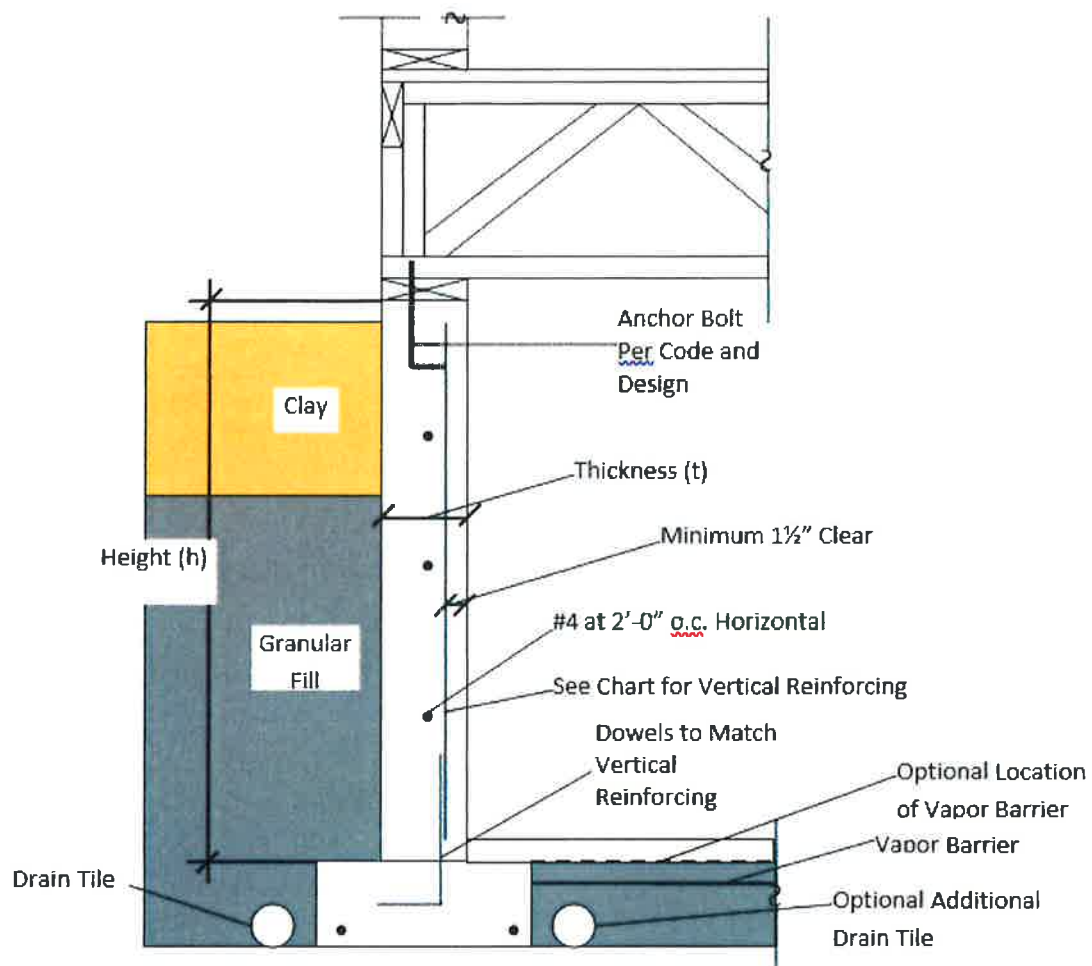
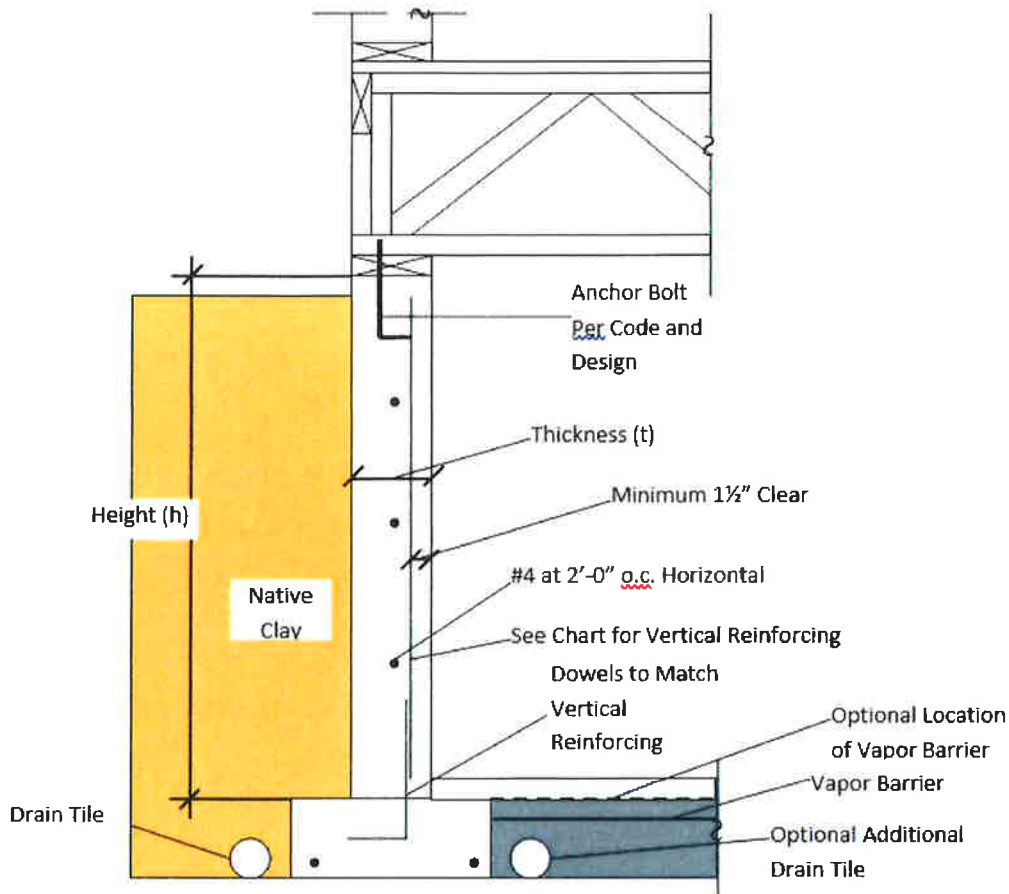


FIGURE R404.1.2(2)



Section R507.3 is hereby deleted in its entirety.

Section 602.2 is hereby amended to read as follows:

Section 602.7.2 Rim board headers. Rim board header size, material and span shall be in accordance with Table R602.7(1). Rim board headers shall be constructed in accordance with Figure R602.7.2 and shall be supported at each end by full-height studs. ~~The number of full-height studs at each end shall be not less than the number of studs displaced by half of the header span based on the maximum stud spacing in accordance with Table R607.3(5).~~ Rim board headers supporting concentrated loads shall be designed in accordance with accepted engineering practice.

Section 602.7.5 is hereby amended to read as follows:

Section R602.7.5 Support for headers. Headers shall be supported on each end with one or more jack studs or with approved framing anchors in accordance with Table R602.7(1) or R602.7(2). The full-height stud adjacent to each end of the header shall be end nailed to each end of the header with four-16d nails (3.5 inches x .0135 inches). ~~The minimum number of full height studs at each end of a header shall be in accordance with Table R602.7.5.~~

Table R602.7.5 is hereby deleted in its entirety.

Section M1301.1.1 Flood-resistant installation is hereby deleted in its entirety

Section M1401.5 Flood Hazzard is hereby deleted in its entirety

Section M1502.4.2 is hereby amended to read as follows:

Section M1502.4.2 Duct Installation. Exhaust ducts shall be supported at intervals not to exceed ~~12~~ 4 (3658 mm) feet and shall be secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Exhaust duct joints ~~shall be sealed in accordance with Section M1601.4.1 and shall~~ may be mechanically fastened. Ducts shall not be joined with screws ~~or similar fasteners that protrude more than 1/8 inch (3.2) into the inside of the duct.~~ Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

Section M1503.6 is hereby amended to read as follows:

Section M1503.6 Makeup air required. Where one or more gas, liquid or solid fuel-burning appliance that is neither direct-vent nor uses a mechanical draft venting system is located within a dwelling unit's air barrier, each exhaust system capable of exhausting in excess of 400 cubic feet per minute (0.19m³/S) shall be mechanically or passively provided with makeup air at a rate approximately equal to the exhaust air rate in excess of 400 cfm. Such makeup air systems shall be equipped with not fewer than one damper complying with Section M1503.6.2.

Section 1503.6 Exception is hereby deleted in its entirety

Section M1601.4.1 Exceptions are hereby amended to read as follows:

Exceptions:

* * *

3. For ducts having a static pressure classification of less than 2 inches of water column (500 Pa), additional closure systems shall not be required for continuously welded joints and seams and locking-type joints and seams. ~~This exception shall not apply to snap lock and button lock type joints and seams that are located outside of conditioned spaces.~~

Section M1601.4.10 Flood Hazzard Areas is hereby deleted in its entirety.

Section M1701.2 Opening Location is hereby deleted in its entirety

Section M2001.4 is hereby deleted in its entirety.

Section M2005.1-General. Is hereby amended to read as follows:

Section M2005.1 General. Water heaters shall be installed in accordance ~~with chapter 28~~ the North Dakota State Plumbing Code, the manufacturer's instructions and the requirements of this code ...

Section M2101.3-Protection of potable water.

Staff recommends continuing the existing amendments.

Section M2101.3 Protection of potable water. The potable water system shall be protected from backflow in accordance with the provisions listed in ~~Section 2902~~ the North Dakota State Plumbing Code.

Section M2101.10 -Tests. Is hereby amended to read as follows:

New hydronic piping systems shall be isolated and tested hydrostatically at a pressure of ~~one and one half times the maximum system design pressure, but not~~ not less than 100 pounds per square inch (698 kPa) the duration of the test shall not be less than 15 min. Hydronic piping to be embedded in concrete shall be pressure tested and inspected prior to pouring concrete.

Section M2103.3 Piping Joints is hereby amended to read as follows

* * *

2. Copper tubing shall be joined by brazing complying with ~~Section P3003.6.1~~ the North Dakota State Plumbing Code.

* * *

Section M2201.6 Flood Resistant Installation is hereby deleted in its entirety

Section G2404.7 Flood Hazzard is hereby deleted in its entirety

Figure G2407.6.1(1) [304.6.1(1)] is hereby deleted in its entirety.

Figure G2407.6.1(2) [304.6.1(2)] is hereby deleted in its entirety.

Section G2407.11 (304.11) is hereby amended to read as follows:

Section G2407.11 (304.11) Combustion air ducts. Combustion air ducts shall comply with all the following:

5. Ducts shall not ~~be screened where terminating~~ terminate in an attic space.

Section G2413.6 is hereby amended to read as follows:

G2413.6 (402.6) Allowable pressure drop. The design pressure loss in any piping system under maximum probable flow conditions, from the point of delivery to the inlet connection of the appliance, shall be such that the supply pressure at the appliance is greater than or equal to the minimum pressure required by the appliance but such pressure loss shall not be greater than .5 inch water column for gas pipe systems operating at less than 2 psi.

Section G2417.4.1 (406.4.1) Test Pressure is hereby amended to read as follows

The test pressure to be used shall not be less than one and one half times the proposed maximum working pressure, but not less than ~~3~~ 25 psig ~~(20 kPa gauge)~~, irrespective of design pressure. Where the test pressure exceeds 125 psig ~~(862 kPa~~

gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

Section G2425.12 (501.12)-Residential and low-heat appliances flue lining systems is hereby amended to read as follows

Section G2425.12 (501.12) Residential and low-heat appliances flue lining systems. Flue lining systems for use with residential-type and low-heat appliances shall be limited to the following:

1. Clay flue lining complying with the requirements of ASTM C 315 or equivalent when each appliance connected into the masonry chimney has a minimum input rating greater than 400,000 Btu/h. Clay flue lining shall be installed in accordance with Chapter 10.
2. Listed chimney liner systems complying with UL 1777.
3. Other approved materials that will resist, without cracking, softening, or corrosion, flue gases and condensate at temperatures up to 1800°F (982°C).
 - a. Aluminum (1100 or 3003 alloy or equivalent) not less than 0.032 inches thick up to 8 inches in diameter.
 - b. Stainless steel (304 or 430 alloy or equivalent) not less than 26 gauge (0.018 inches thick) to 8 inches in diameter or not less than 24 gauge (0.024 inches thick) 8 inches in diameter and larger.When a metal liner is used other than a listed chimney liner a condensation drip tee shall be installed and supported in an approved manner.

Section 2427.5.2 (503.5.3)-Masonry chimneys

G2427.5.2 (503.5.3) Masonry chimneys. Masonry *chimneys* shall be built and installed in accordance with NFPA211 and shall be lined ~~with an approved clay flue lining, a chimney lining system listed and labeled in accordance with UL 1777 or other approved material that will resist corrosion, erosion, softening or cracking from vent gases at temperatures up to 1,800°F (982°C) as per G2425.12.~~

Section G2439.7.2 (614.8.2) is hereby amended to read as follows:

G2439.7.2 (614.8.2) Duct Installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws, ~~or similar fasteners that protrude more than 1/8 inch (3.2 mm) into~~

~~the inside of the duct.~~ Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

Section G2442.4 (618.4) -Screen

G2442.4 (618.4) Screen. Required outdoor air inlets shall be covered with a screen having $\frac{1}{4}$ inch (6.4 mm) openings. Required outdoor air inlets serving a nonresidential portion of a building shall be covered with screen having openings larger than $\frac{1}{4}$ inch (6.4 mm) and not larger than $\frac{1}{2}$ inch. (25 mm).

Chapters 25 through 43 are hereby deleted in their entirety.

2021 IBC Amendments

Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Building Code of ~~(NAME OF JURISDICTION)~~ the City of Fargo hereinafter referred to as "this code."

Section 101.4.3 is hereby amended to read as follows:

101.4.3 Plumbing. The provisions of the ~~International Plumbing Code~~ North Dakota State Plumbing Code shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the ~~International Private Sewage Disposal Code~~ North Dakota State Plumbing Code shall apply to private sewage disposal systems.

Section 103.1 is hereby amended to read as follows:

103.1 Creation of enforcement agency. The Inspections Department ~~[INSERT NAME OF DEPARTMENT]~~ is hereby created and the official in charge thereof shall be known as the building official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

Section 104.2.1 Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas Is hereby deleted in its entirety.

Section 104.8.1 is hereby amended to read as follows:

104.8.1 Legal Defense. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code. This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section 104.10.1 Flood hazard areas Is hereby deleted in its entirety.

Section 105.2 is hereby amended to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

2. Fences not over ~~7~~ 8.5 feet high.

6. Sidewalks and driveways ~~not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.~~

11. Swings and other playground equipment ~~accessory to detached one- and two-family dwellings.~~

12. Window awnings in Group R-3 and U occupancies, supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.

14. Reroofing.

Section 107.2.6.1 Design Flood Elevations Is hereby deleted in its entirety.

Section 107.3.1 Is hereby amended to read as follows:

107.3.1 Approval of construction documents. When the building official issues a permit, the construction documents shall be approved, in writing or by stamp, ~~as "Reviewed for Code Compliance."~~ One set of construction documents so reviewed shall be retained by the Building Official. ~~The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.~~

Section 109.2 Is hereby amended to read as follows:

109.2 Schedule of permit fees. Where a permit is required, a fee for each permit and plan review shall be paid as required, in accordance with the schedule as established by the ~~applicable governing authority~~ Board of City Commissioners. The plan review fees specified in this subsection are separate from, and in addition to, permit fees. When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 107.3.4.1, an additional plan review fee shall be charged in an amount not to exceed 10% of the building permit fee established in Section 109.2.

Section 110.3.3 Lowest floor elevation is hereby deleted in its entirety

Section 110.3.12.1 Flood hazard documentation is hereby deleted in its entirety

Section 305.2 is hereby amended to read as follows:

305.2 Group E, day care facilities. This group includes buildings and structures or portions thereof occupied by more than ~~five~~ twelve children older than 2 ½ years of age who receive educational, supervision or personal care services for fewer than 24 hours per day.

Section 305.2.2 is hereby amended to read as follows:

305.2.2 ~~Five~~ Twelve or fewer children. A facility having ~~five~~ twelve or fewer children receiving such day care shall be classified as part of the primary occupancy.

Section 305.2.3 is hereby amended to read as follows:

305.2.3 ~~Five~~ Twelve or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having ~~five~~ twelve or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code.

Section 308.5 is hereby amended to read in part as follows:

308.5 Institutional Group I-4 Daycare facilities

“...occupied by more than ~~five~~ twelve persons of any age”

Section 308.5.1 is hereby amended to read in part as follows:

308.5.1 Classification as a Group E.

“.....provides care for more than ~~five~~ twelve but not more than 100 children...”

Section 308.5.3 is hereby amended to read as follows

308.5.3 ~~Five~~ Twelve or fewer persons receiving care. A facility having ~~five~~ twelve or fewer persons receiving custodial care shall be classified as part of the primary occupancy.

Section 308.5.4 is hereby amended to read as follows:

Section 308.5.4 ~~Five~~ Twelve or fewer persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit having ~~five~~ twelve or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code.

Section 406.3.2.1 The last sentence of this section is hereby deleted as follows:

~~Doors shall be self-closing and self-latching.~~

Section 802.4 is hereby deleted in its entirety.

Section 905.1 is hereby amended to add an exception to read as follows:

Exception: The installation of fire hose on standpipes may be omitted when approved by the local fire code official. Approved standpipe hose valves and connections shall be provided where required.

Section 907.2.11.1 is hereby amended to read as follows:

907.2.11.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

* * *

4. In sleeping units where the ceiling height of a room open to the hallway serving the sleeping rooms exceeds that of the hallway by 24 inches or more, smoke alarms shall be installed in the hallway and in the adjacent room.

Section 907.2.11.2 is hereby amended to read as follows:

907.2.11.2 Groups R-2, R-3, R-4 and I-1. Single- or multiple station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and I-1 regardless of occupant load at all of the following locations:

* * *

4. In dwelling units where the ceiling height of a room open to the hallway serving the sleeping room exceeds that of the hallway by 24 inches or more, smoke alarms shall be installed in the hallway and in the adjacent room.

Section 1003.3.1 is hereby amended as follows:

* * *

An approved barrier shall be provided where the vertical clearance above a *circulation path* is less than 80 inches (2032 mm) high above the finished floor. ~~The leading edge A~~ A portion of such a barrier shall be located 27 inches (686 mm) maximum above the finished floor.

Section 1009.8.1 is hereby amended to read as follows:

1009.8.1 System requirements. Two-way communication systems shall provide communication between each required location and the fire command center or a central control point location approved by the fire department. Where the central control point is not a constantly attended location, the two-way communication system shall have timed, automatic telephone dial-out capability that provides two-way communication with an approved supervising station ~~or 9-1-1~~. The two-way communication system shall include both audible and visible signals.

SECTION 1011.1 Exceptions are hereby amended to read as follows.

1. Within rooms or spaces used for assembly purposes, stepped aisles shall comply with Section 1030.
2. A stairway complying with section 1011 except where in a B, F, M, S or U that serves an area of 750 sf or less, and is not open to the public, that has a maximum riser height of 8 inches and a minimum tread depth of 9 inches, has a minimum width of 36 inches and has at least one handrail that terminates at the top and bottom riser and otherwise complies with section 1014.

Section 1011.5.2 Exceptions are hereby amended to read as follows:

Section 1011.5.2 Exceptions:

* * *

3. In Group R-3 occupancies; within dwelling units in Group R-2 occupancies; and in Group U occupancies that are accessory to a Group R-3 occupancy or accessory to individual dwelling units; the maximum riser height shall be ~~7 ¾ inches(197 mm)~~ 8 inches; the minimum tread depth shall be ~~10 inches(254 mm)~~ 9 inches; and the minimum winder tread depth shall be 6 inches(152mm). A nosing projection not less than ¾ inch(19.1mm) but not more than 1 ¼ inches(32mm) shall be provided on stairways with solid risers where the tread depth is less than 11 inches(279mm)

Section 1015.2 is hereby amended to read as follows:

1015.2 Where required. Guards shall be located along open-sided walking surfaces, including mezzanines, equipment platforms, aisles, stairs, ramps and landings, that are located more than 30 inches(762 mm) ~~measured vertically to the floor or grade below at any point within 36 inches (914 mm) horizontally to the edge of the open side~~ above the floor or grade below or if within 36 inches (914 mm) horizontally to the edge of the open

side of the vertical measurement to the floor or grade below is greater than 48 inches.
Guards shall be adequate in strength and attachment in accordance with section 1607.9.

Section 1104.4 Exceptions are hereby amended to read as follows:

Section 1104.4 Exceptions:

1. An *accessible* route is not required to *stories, mezzanines* and occupied roofs that have an ~~aggregate~~ area of not more than 3,000 square feet (278.7 m²), or are in a building 2 stories or less above grade plane and are located above ~~and~~ or below accessible levels. This exception shall not apply to:

* * *

Section 1202.1 is hereby amended to read as follows:

1202.1 General. Buildings shall be provided with natural ventilation in accordance with Section 1202.5, or mechanical ventilation in accordance with the International Mechanical Code.

~~Where the air infiltration rate in a dwelling unit is less than 5 air changes per hour where tested with a blower door at a pressure 0.2 inch w.c. (50 Pa) in accordance with Section R402.4.1.2 of the International Energy Conservation Code Residential Provisions, the dwelling unit shall be ventilated by mechanical means in accordance with Section 403 of the International Mechanical Code. Ambulatory care facilities and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407 of the International Mechanical Code.~~

Section 1204.4.4 Flood hazard areas is hereby deleted in its entirety.

Sections 1206 Sound Transmission is hereby deleted in its entirety.

Section 1402.6 Flood resistance is hereby deleted in its entirety.

Section 1402.7 Flood resistance for coastal high-hazard areas and coastal A zones is hereby deleted in their entirety.

Section 1601.1 is hereby amended to read as follows:

1601.1 Scope. The provisions of this chapter shall govern the structural design of buildings, structures and portions thereof regulated by this code.

It shall not be the responsibility of the building official to determine engineering requirements of this code. Exclusive of the conventional light-frame wood construction provisions referenced in Section 2308, the method to resist loads as referenced in this chapter is the responsibility of a structural engineer or other qualified design professional.

Section 1610.1 exception is hereby amended to read as follows:

Exception: Foundation walls extending not more than 8 9 feet (2438 mm) below grade and laterally supported at the top by flexible diaphragms shall be permitted to be designed for active pressure.

Section 1612 Flood Loads is hereby deleted in its entirety.

Section 1804.4 is hereby deleted in its entirety and the following text enacted:

Section 1804.4 Site Grading. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection. Lots shall be graded to drain surface water away from foundation walls.

The procedure used to establish the final ground level adjacent to the foundation shall account for additional settlement of the backfill.

Section 1804.5 Grading and fill in flood hazard areas is hereby deleted in its entirety.

Section 1805.1.2.1 Flood hazard areas is hereby deleted in its entirety.

Section 1809.5 is hereby amended to add a new exception 4 as follows:

1809.5 Frost protection. Except where otherwise protected from frost...

* * *

4. Free-standing buildings used as Group U occupancies for the storage of private or pleasure-type motor vehicles constructed in accordance with Sections 406.3.1.

Section 2901.1 is hereby amended to read as follows:

Section 2901.1 Scope. The provisions of this chapter and the North Dakota State Plumbing Code ~~International Plumbing Code~~ shall govern the design, construction, erection and installation of plumbing components, appliances, equipment and systems used in buildings and structures covered by this code. Toilet and bathing rooms shall be constructed in

accordance with Section 1210. Private sewage disposal systems shall conform to the North Dakota State Plumbing Code ~~International Private Sewage Disposal Code~~. The International Fire Code, the International Property Maintenance Code and the North Dakota State Plumbing Code ~~International Plumbing Code~~ shall govern the use and maintenance of plumbing components, appliances, equipment and systems. The International Existing Building Code and the North Dakota State Plumbing Code ~~International Plumbing Code~~ shall govern the alteration, repair, relocation, replacement and addition of plumbing components, appliances, equipment and systems.

2021 International Mechanical Code Amendments

Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the *Mechanical Code of the City of Fargo* hereinafter referred to as "this code."

Sections 103.1 is hereby amended to read as follows:

103.1 General. The department of mechanical inspections is hereby created and the executive official in charge thereof shall be known as the code official.

Section 103.4 is hereby amended to read as follows:

103.4 Liability. The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered civilly or criminally liable personally, and is hereby relieved from personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties.

Any suit or criminal complaint instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section 106.4.8 is hereby deleted in its entirety.

Section 106.5.2 is amended to read as follows:

106.5.2 Fee schedule. The fees for mechanical work shall be as indicated in the following schedule as established by the Fargo Board of City Commissioners.

Section 106.5.3 is hereby amended as follows:

106.5.3 Fee refunds. The code official shall authorize the refunding of fees as follows.

1. The full amount of any fee paid hereunder which was erroneously paid or collected.
2. Not more than [80] percent of the permit fee paid where work has not been done under a permit issued in accordance with this code.
3. Not more than [80] percent of the plan review fee paid where an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

Section 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code*, *International Fire Code*, *International Fuel Gas Code*, or the *International North Dakota State Plumbing Code*, such terms shall have meanings ascribed to them as in those codes.

Section 305.4 is hereby amended to read as follows:

305.4 Interval of support. Piping shall be supported at distances not exceeding the spacing specified in Table 305.4, or in accordance with ANSI/MSS SP-58. In addition to the requirements of Table 305.4, piping and tubing shall be supported within 2 feet (610 mm) of every bend or angle.

Section 307.2.2 is hereby amended to read as follows:

307.2.2 Drain pipe materials and sizes. Components of the condensate disposal system shall be cast iron, galvanized steel, copper, copper alloy, cross-linked polyethylene, polyethylene, ABS, CPVC, PVC, or polypropylene pipe or tubing. Components shall be selected for the pressure and temperature rating of the installation. Joints and connections shall be made in accordance with the applicable provisions of ~~Chapter 7 of the International~~ the North Dakota State Plumbing Code relative to the material type. Condensate waste and drain line size shall be not less than 3/4-inch (19 mm) internal diameter and shall not decrease in size from the drain pan connection to the place of condensate disposal. Where the

drain pipes from more than one unit are manifold together for condensate drainage, the pipe or tubing shall be sized in accordance with Table 307.2.2.

Section 403.1 is hereby amended to read as follows:

403.1 Ventilation system. Mechanical ventilation shall be provided by a method of supply air and return or *exhaust air* ~~except that mechanical ventilation air requirements for Group R-2, R-3 and R-4 occupancies three stories and less in height above grade plane shall be provided by an exhaust system, supply system or combination thereof.~~ The amount of supply air shall be approximately equal to the amount of return and *exhaust air*. The system shall not be prohibited from producing negative or positive pressure. The system to convey *ventilation air* shall be designed and installed in accordance with Chapter 6.

Section 504.8.2 is hereby amended to read as follows:

504.8.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws, ~~or similar fasteners that protrude more than 1/8 inch (3.2mm) into the inside of the duct.~~ Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

Section 505.4 is hereby amended to read as follows:

505.4 Makeup air required. Exhaust hood systems capable off exhausting in excess of 400 cfm (0.19m³/s) shall be provided with makeup air at a rate in excess of 400 cfm. ~~approximately equal to the exhaust air rate.~~ Such makeup air systems shall be equipped with a means of closure and shall be automatically controlled to start and operate simultaneously with the exhaust system.

Section 508.2 is hereby amended to read as follows:

508.2 Compensating hoods. Manufacturers of compensating hoods shall provide a label indicating the minimum exhaust flow, the maximum makeup airflow or both that provides capture and containment of the exhaust effluent. Short circuit compensating hoods are prohibited.

Section 508.2.1 is hereby added to read as follows:

508.2.1 Compensating Hood Make-up Air. Compensating hoods shall extract at least 40% of the required exhaust air flow from the kitchen area.

Section 701.2 is hereby added to read as follows:

701.2 Attic space. Attic space shall not be used for combustion air.

Section 908.5 is hereby amended to read as follows:

908.5 Water supply. Cooling towers, evaporative coolers and fluid coolers shall be provided with an approved water supply, sized for peak demand. The quality of water shall be provided in accordance with the equipment manufacturer's recommendations. The piping system and protection of the potable water supply system shall be installed as required by the *International North Dakota State Plumbing Code*.

Section 1006.6, Item 13 is hereby amended to read as follows:

1006.6, Item 13

13. Be constructed of those materials listed in ~~Section 605.4~~ of the *International North Dakota State Plumbing Code* or materials tested, rated and approved for such use in accordance with ASME A112.4.1.

Section 1007.2 is hereby deleted in its entirety.

Section 1008.2 is hereby amended to read as follows:

1008.2 Discharge. Blow off valves shall discharge to a safe place of disposal. Where discharging to the drainage system, the installation shall conform to the *International North Dakota State Plumbing Code*.

Section 1104.2 is hereby amended to add the following:

1104.2 Machinery Rooms. ***

Exceptions:

3. If an existing refrigerating system is replaced or if an existing refrigeration plant is increased by not more than 50% of its original capacity, but not more than 100 tons per system using a non-flammable class A1 or B1 refrigerant and the refrigeration machinery room was not provided in the original installation prior to 1994, a refrigeration machinery room shall not be required. If the existing refrigeration is not located in general machinery room separated from occupied spaces, a refrigeration machinery room shall be provided. The space containing the refrigeration machinery shall meet the requirement of Section 1104.3.4, protection room refrigerant decomposition., and Section 1105.3. requiring refrigerant

detection. If the requirements of 1104.3.4 and 1105.3 cannot be met, a refrigeration machinery room shall be provided.

Section 1208.1 is hereby amended to read as follows:

Section 1208.1 General. New hydronic piping shall be isolated and tested hydrostatically at ~~one and one-half times the maximum system design pressure,~~ but not less than 100 psi (689 kPa). The duration of the test shall be not less than 15 minutes.

2021 International Fuel Gas Code Amendments

Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the *Fuel Gas Code* of [NAME OF JURISDICTION] the city of Fargo hereinafter referred to as "this code."

Section 103.4 is amended to read as follows:

103.4 Liability. The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section 106.6.2 is hereby amended as follows:

106.6.2 Fee schedule. The fees for mechanical work shall be as indicated in the following schedule as established by the Fargo Board of City Commissioners.

Section 106.6.3 is hereby amended as follows:

106.6.3 Fee refunds. The code official shall authorize the refunding of fees as follows.

1. The full amount of any fee paid hereunder which was erroneously paid or collected.
2. Not more than [80] percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

3. Not more than [80] percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

Section 303.3 Is hereby amended to read as follows:

303.3 Prohibited locations. Appliances shall not be located in sleeping rooms, bathrooms, toilet rooms, storage closets or surgical rooms, or in a space that opens only into such rooms or spaces, except where the installation complies with one of the following:

1. The *appliance* is a direct-vent *appliance* installed in accordance with the conditions of the listing and the manufacturer's instructions.
2. Vented room heaters, wall furnaces, vented decorative appliances, vented gas fireplaces, vented gas fireplace heaters and decorative appliances for installation in vented solid fuel-burning fireplaces are installed in rooms that meet the required volume criteria of Section 304.5
3. ~~A single wall-mounted unvented room heater is installed in a bathroom and such unvented room heater is equipped as specified in Section 621.6 and has an input rating not greater than 6,000 Btu/h (1.76 kW). The bathroom shall meet the required volume criteria of Section 304.5.~~
4. ~~A single wall-mounted unvented room heater is installed in a bedroom and such unvented room heater is equipped as specified in Section 621.6 and has an input rating not greater than 10,000 Btu/h (2.93 kW). The bedroom shall meet the required volume criteria of Section 304.5.~~
5. The *appliance* is installed in a room or space that opens only into a bedroom or bathroom, and such room or space is used for no other purpose and is provided with a solid weather-stripped door equipped with an *approved* self-closing device. All *combustion air* shall be taken directly from the outdoors in accordance with Section 304.6.

Section 304.6.1 is hereby amended to read as follows:

304.6.1 Two-permanent-openings method.

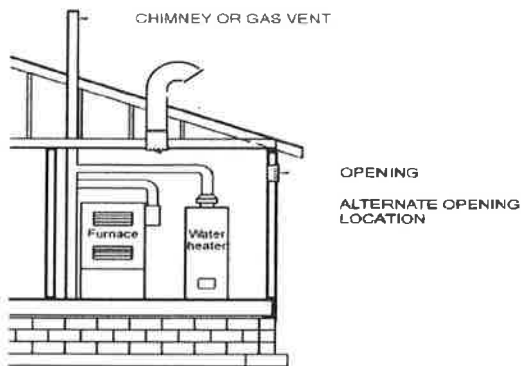
Where directly communicating with the outdoors, or where communicating with the outdoors through vertical ducts, each opening shall have a

minimum free area of 1square inch per 4,000 Btu/h (550 mm²/kW) of total input rating of all appliances in the enclosure [~~see Figures 304.6.1(1) and 304.6.1(2)~~].

Figure 304.6.1 (1) is hereby deleted in its entirety.

Figure 304.6.1 (2) is hereby deleted in its entirety.

Figure 304.6.2 is hereby amended as shown below:



Section 304.6.2 is hereby amended to read as follows:

304.6.2 One-permanent-opening method. One permanent opening, commencing within 12 inches (305 mm) of the top of the enclosure, shall be provided. The *appliance* shall have clearances of at least 1 inch (25 mm) from the sides and back and 6 inches (152 mm) from the front of the *appliance*. The opening shall directly communicate with the outdoors or through a vertical or horizontal duct to the outdoors, ~~or spaces that freely communicate with the outdoors (see Figure 304.6.2)~~ and shall have a minimum free area of 1 square inch per 3,000 Btu/h (734mm²/kW) of the total input rating of all appliances located in the enclosure and not less than the sum of the areas of all vent connectors in the space.

Section 304.11 is hereby amended to read as follows

304.11 Combustion air ducts. Combustion air ducts shall comply with all of the following:

5. Ducts shall not ~~be screened where terminating~~ terminate in an attic space.

Section 403.3 is hereby amended to read as follows:

403.3 Other materials. Material not covered by the standards specifications listed herein shall be investigated and tested to determine that it is safe and suitable for the proposed service, and, in addition, shall be recommended for that service by the manufacturer and shall be *approved* by the code official. Listed LPG hose may be used with natural gas when used for temporary heating at a maximum length of 50 feet.

Section 403.10.1.1 is hereby added to read as follows:

403.10.1.1 Gas supply systems with pressures 5 psig or greater and gas pipe joints 2 ½ inches or larger, regardless of pressure, shall be welded.

Section 403.10.4 is hereby amended to read as follows:

403.10.4 Metallic fittings. Metallic fittings shall comply with the following;

1. Threaded fittings in sizes ~~larger than 4 inches (102 mm)~~ 2 ½ inches or larger shall not be used except where approved.

Section 406.4 is hereby amended to read as follows:

406.4 Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. ~~Mechanical gauges used to measure test pressures shall have a range such that the highest end of the scale is not greater than five times the test pressure.~~ Dial gauges used to measure test pressures shall be performed with gauges of 2 psi incrimination or less and have a range not exceeding 100 psi unless otherwise approved.

Section 406.4.1 is hereby amended to read as follows:

406.4.1 Test pressure. The test pressure to be used shall be no less than 11/2 times the proposed maximum working pressure, but not less than ~~3 psig (20 kPa gauge),~~ 25 psig irrespective of design pressure. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

Section 408.2 is hereby amended to read as follows:

408.2 Drips. Where wet gas exists, a drip shall be provided at any point in the line of pipe where condensate could collect. ~~A drip shall also be provided at the outlet of the meter and shall be installed so as to constitute a trap wherein an accumulation of condensate will shut off the flow of gas before the condensate will run back into the meter.~~

Section 411.2 is hereby amended to read as follows:

411.2 Manufactured home connections. Manufactured homes shall be connected to the distribution *piping* system by ~~one of the following materials:~~

- ~~1. — Metallic pipe in accordance with Section 403.4.~~
- ~~2. — Metallic tubing in accordance with Section 403.5.~~
- ~~3. — Listed and labeled connectors in compliance with ANSI Z21.75/CSA 6.27 and installed in accordance with the manufacturer's installation instructions.~~

Section 415.1 is hereby amended to add the following:

415.1 Interval of support. *Piping* shall be supported at intervals not exceeding the spacing specified in Table 415.1. Spacing of supports for CSST shall be in accordance with the CSST manufacturer's instructions. In addition to the requirements of Table 415.1, piping and tubing shall be supported within 2 feet of every bend or angle.

Section 501.12 is hereby amended to read as follows:

501.12 Residential and low-heat appliances flue lining systems. Flue lining systems for use with residential-type and low-heat appliances shall be limited to the following:

1. Clay flue lining complying with the requirements of ASTM C 315 or equivalent when each appliance connected into the masonry chimney has a minimum input rating greater than 400,000 Btu/h. Clay flue lining shall be installed in accordance with the *International Building Code*.
2. *Listed* chimney lining systems complying with UL1777.
3. Other *approved* materials that will resist, without cracking, softening or corrosion, flue gases and condensate at temperatures up to 1,800°F (982°C).
 - a. Aluminum (1100 or 3003 alloy or equivalent) not less than 0.032 inches thick to 8 inches diameter.
 - b. Stainless steel (304 or 430 alloy or equivalent) not less than 26 gauge (0.018 inches thick) to 8 inches diameter or not less than 24 gauge (0.024 inches thick) 8 inches diameter and larger.

When a metal liner is used other than a listed chimney liner a condensation drip tee shall be installed and supported in an approved manner.

Section 503.5.3 is hereby amended to read as follows:

503.5.3 Masonry chimneys. Masonry chimneys shall be built and installed in accordance with NFPA 211 and shall be lined with ~~approved~~ clay flue lining, a ~~listed~~ chimney lining system or other ~~approved~~ material that will resist corrosion, erosion, softening or cracking from vent gases at temperatures up to 1,800°F (982°C). as per sec. 501.12. ***

Section 503.5.6.1 is hereby amended to read as follows:

503.5.6.1 Chimney lining. Chimneys shall be lined in accordance with NFPA 211 and Section 501.12.

Exception: Where an existing chimney complies with Sections 503.5.6 through-503.5.6.3 and its sizing is in accordance with Section 503.5.5, its continued use shall be allowed ~~where the appliance vented by such chimney is replaced by an appliance of similar type, input rating and efficiency.~~ when, in more than one appliance venting system the secondary appliance, such as a water heater, is replaced and the primary heating appliance remains.

Section 614.8.2 is hereby amended to read as follows:

Section 614.8.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. ~~Ducts shall not be joined with screws or similar fasteners that protrude more than 1/8 inch (3.2 mm) into the inside of the duct.~~

Section 621 is hereby deleted in its entirety.

2021 International Existing Building Code

Amendments Only

Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Existing Building Code of ~~(NAME OF JURISDICTION)~~ the City of Fargo hereinafter referred to as "this code."

New Section 103.1 Creation of Agency Page 1-2

The City of Fargo is hereby created, and the official in charge thereof shall be known as the code official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

Section 104.2.1 is hereby deleted in its entirety.

Section 104.2.2.1 is hereby amended to read as follows:

104.2.2.1 Building evaluation. The code official is authorized to require an existing building to be investigated and evaluated at the owner's expense by a registered design professional based on the circumstances agreed upon at the preliminary meeting. The design professional shall notify the code official if any potential nonconformance with the provisions of this code is identified.

Section 104.8 is hereby amended to read as follows:

104.8 Liability. The code official, member of the Board of Appeals, or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by

that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for cost in any action, suit, or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section 104.10.1 is deleted in its entirety.

Section 105.2 is hereby amended to read as follows:

Section 105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

* * *

7. Reroofing.

8. Window Replacement

Section 109.3.3 is hereby deleted in its entirety

Section 109.3.10 is hereby deleted in its entirety

Section 114 Stop Work Order There is added language that matches the IBC and this is the way we currently enforce stop work orders

Section 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the other International Codes, such terms shall have the meanings ascribed to them in those codes.

Wherever the term "International Plumbing Code" and/or the "International Private Sewage Disposal Code" is used it shall mean the North Dakota State Plumbing Code. Wherever the term "ICC Electrical Code" is used it shall mean the National Electric Code together with the North Dakota State Wiring Standards. Wherever the term "Flood Hazard Area" is used, it shall mean the Fargo Flood Plain Management ordinance together with the Flood Proofing Code of the city of Fargo, North Dakota.

Section 401.3 is hereby deleted in its entirety.

Section 405.2.6 is hereby deleted in its entirety.

Section 502.3 is hereby deleted in its entirety.

Section 503.2 is hereby deleted in its entirety.

Section 507.3 is hereby deleted in its entirety.

Section 701.3 is hereby deleted in its entirety.

Section 1103.3 is hereby deleted in their entirety.

Section 1201.4 is hereby deleted in its entirety.

Section 1301.3.3 is hereby deleted in its entirety.

Section 1401.2 is hereby amended to read as follows:

1401.2 Conformance. Buildings to be moved within this jurisdiction shall comply with provisions of this chapter. Buildings to be moved into this jurisdiction shall comply with the provisions of the International Codes for new buildings and shall be certified as to that compliance by an agency approved by the code official. ~~The building shall be safe for human occupancy as determined by the International Fire Code and the International Property Maintenance Code. Any repair, alteration or change of occupancy undertaken within the moved structure shall comply with the requirements of this code applicable to the work being performed. Any field-fabricated elements shall comply with the requirements of the International Building Code or the International Residential Code as applicable.~~

Section 1402.6 is hereby deleted in its entirety.

CITY OF FARGO POLICE DEPARTMENT

Chief David B. Zibolski



105 25th Street North, Fargo, North Dakota 58102
Office: 701-241-1400 Fax: 701-297-7789
www.fargopolice.com

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February 2, 2022

Fargo City Commission
City Hall
225 4th Street N.
Fargo, ND 58102

Re: Approval of Drug Enforcement Administration (DEA) Funded Task Force Officer Agreement

Dear Commissioners,

The Fargo Police Department has one detective assigned to our regional DEA office as a Task Force Officer. As part of that assignment, designated overtime worked by this detective is reimbursed to the Department by the DEA.

The attached agreement is an annual renewal that enables the reimbursement to occur. The agreement has been reviewed and approved by City Attorney, Nancy Morris.

Recommended Motion

Approve the DEA Task Force Agreement.

Please contact me if you have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Zibolski".

David B. Zibolski
Chief of Police

Copy: Kent Costin, Finance Director



Fargo Police Department

Memo

To: Chief David Zibolski

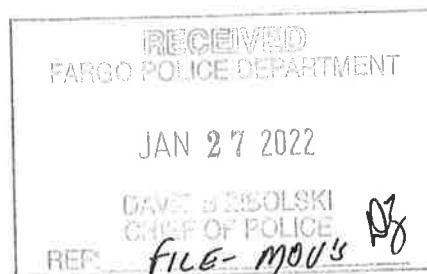
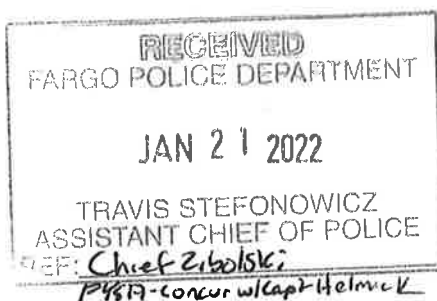
From: Captain Chris Helmick *CH*

Date: January 20, 2022

RE: Drug Enforcement Administration Funded Task Force Agreement

Attached is the annual Drug Enforcement Administration (DEA) funded task force agreement that is ready for submission to the city commission for approval. This agreement is separate from the Task Force Memorandum of Understanding and outlines the overtime reimbursement for our Task Force Officer. Approval and signing of this agreement will allow the DEA to reimburse our department for any overtime costs associated with our TFO participating in DEA operations. This agreement will be in effect until September 30, 2022.

My recommendation is to submit to city commission for approval.



- for commission agenda 2/7/22

PROGRAM - FUNDED STATE AND LOCAL TASK FORCE AGREEMENT

This agreement is made this 1st day of October, 2021, between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and the Fargo Police Department ORI#ND0090200 (hereinafter "FPD"). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the North Dakota area and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of North Dakota, the parties hereto agree to the following:

1. The Fargo Resident Office Task Force will perform the activities and duties described below:
 - a. disrupt the illicit drug traffic in the North Dakota area by immobilizing targeted violators and trafficking organizations;
 - b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and
 - c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of North Dakota.
2. To accomplish the objectives of the Fargo Resident Office Task Force, the FPD agrees to detail one (1) experienced officer(s) to the Fargo Resident Office Task Force for a period of not less than two years. During this period of assignment, the FPD officer(s) will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.
3. The FPD officer(s) assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force.
4. The FPD officer(s) assigned to the Task Force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. Section 878.
5. To accomplish the objectives of the Fargo Resident Office Task Force, DEA will assign five (5) Special Agents to the Task Force. DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA Special Agent and FPD officer(s) assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.
6. During the period of assignment to the Task Force, the FPD will remain responsible for establishing the salary and benefits, including overtime, of the officer(s) assigned to the Task Force, and for making all payments due them. DEA will, subject to availability of funds,

reimburse the FPD for overtime payment. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-12, Step 1, of the general pay scale for the Rest of United States. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted **monthly or quarterly** on a fiscal year basis, and which provides the names of the investigators who incurred overtime for DEA during the invoiced period, the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator, and the total cost for the invoiced period. Invoices must be submitted at least quarterly within 30 days of the end of the invoiced period. **Note: Task Force Officer's overtime "shall not include any costs for benefits, such as retirement, FICA, and other expenses."**

7. In no event will the FPD charge any indirect cost rate to DEA for the administration or implementation of this agreement.
8. The FPD shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under this agreement in accordance with generally accepted accounting principles and instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.
9. The FPD shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The FPD shall maintain all such reports and records until all litigation, claim, audits and examinations are completed and resolved, or for a period of six (6) years after termination of this agreement, whichever is later.
10. The FPD shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H and I.
11. The FPD agrees that an authorized officer or employee will execute and return to DEA the attached OJP Form 4061/6, Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. The FPD acknowledges that this agreement will not take effect and no Federal funds will be awarded to the by DEA until the completed certification is received.
12. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the FPD shall clearly state: (1) the percentage of the total cost of the program or project which will be financed with Federal money and (2) the dollar amount of Federal funds for the project or program.
13. The term of this agreement shall be effective from the date in paragraph number one until September 30, 2022. This agreement may be terminated by either party on thirty days' advance written notice. Billing for all outstanding obligations must be received by DEA

within 90 days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by FPD during the term of this agreement.

For the Drug Enforcement Administration:

Justin C. King
Special Agent in Charge

Date: _____

For the Fargo Police Department:

David B. Zibolski
Chief

Date: _____

Dr. Timothy Mahoney
Mayor

Date: _____

Steve Sprague
City Auditor

Date: _____



(116)

PUBLIC WORKS/OPERATIONS

Fleet Management, Forestry,
Streets & Sewers, Watermeters,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1453
FAX: (701) 241-8100

February 1, 2022

The Honorable Board of City Commissioners
City of Fargo
225 North Fourth Street
Fargo, ND 58102

RE: PW2201 NOTICE OF GRANT AWARD FROM STATE OF NORTH DAKOTA

Commissioners:

The following Notice of Grant Award (5032-ECG22) with the State of North Dakota designed for the Energy Conservation Grant Program. The Grant award has been approved for \$4,930.00 in program dollars with a dollar-for-dollar matching funds of \$4,930.00. Funds will be used to replace fluorescent lighting to LED at the Public Works West building.

No budget adjustments are required for this contract.

A copy of the Contract and Energy Savings Analysis is available at the commission office for viewing and signatures.

SUGGESTED MOTION:

Move to approve the contract for the Energy Conservation Grant of \$4,930.00.

Respectfully Submitted,

Tanner Smedshammer
Fleet Purchasing Manager

Energy Conservation Program Grant Agreement

Between: State of North Dakota, acting by and through (Grantor)
 The Department of Commerce
 1600 E. Century Avenue, Suite 6
 PO Box 2057
 Bismarck, ND 58502-2057

And: Mayor Tim Mahoney (Grantee)
 2401 3rd Avenue N
 Fargo, ND 58102

Date: January 25, 2022
 Grant Number: **5032-ECG22**

SECTION 1 LEGAL BASIS OF AWARD

Pursuant to North Dakota legislative action, the Grantor is authorized to enter into a Grant Agreement and to make an award, from funds received through the North Dakota Department of Commerce to the Grantee for the Energy Conservation Grant Program. The Grantor is willing to make the grant and the Grantee is willing to accept the grant on the terms and conditions of this Agreement. Accordingly, the parties hereby agree as follows:

SECTION 2 GRANT AWARD

The Grantee's Energy Conservation Grant Program Application has been approved for \$4,930.00 in program dollars with dollar-for-dollar matching funds of \$4,930.00. Funds will be used to replace fluorescent lighting to LED in the office areas of a commercial building, as show in the application.

Grant activities must be completed in the approved grant period January 21, 2022, through June 30, 2023.

To request payment of Energy Conservation Grant Program funds, the Grantee must submit a reimbursement request to the Grantor with copies of paid invoices, receipts, or other documentation showing that the approved activity has been completed. The Energy Reimbursement Request is available at <https://www.communityservices.nd.gov/uploads/30/SFN59519EECBGReimbursementRequest.pdf>.

The Grantor will approve payment of energy conservation program funds, based on matching percentages, up to the amount of this award, with additional expenses the sole responsibility of the Grantee.



The Grantor reserves the right to request additional documentation to confirm the completion of the project. Payment of energy conservation grant funds will be held until additional information is received and any questions have been addressed.

The Grantee must submit all reimbursement requests to the Grantor by June 30, 2023. This Grant Agreement will expire on that date and any funds remaining unpaid will revert back to the Energy Conservation Grant Program.

SECTION 3

GRANTEE'S UNDERSTANDING OF TERM OF FUNDING

The Grantee understands that this grant is a one-time grant and acknowledges that it has been furnished no assurances that this grant may be extended for periods beyond its termination date.

Should no activity occur within three months of the funding of this agreement, the agreement may be terminated with grant funds returning to the energy conservation grant program to be made available to other applicants.

SECTION 4

GRANTEE ASSURANCES

This grant shall be construed according to the laws of the state of North Dakota. In connection with the furnishing of supplies or performance of work under this grant, persons who contract with or receive funds from the North Dakota Department of Commerce are obligated and agree to comply with all local, state and federal laws, regulations and executive orders related to the performance of this grant including but not limited to the following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the North Dakota Human Rights Act, the Drug Abuse Prevention Treatment and Rehabilitation Act of 1970, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Alcohol, Drug Abuse and Mental Health Administration Reorganization Act of 1992, the Pro-children Act of 1994, and the Drug-free Workplace Act of 1988.

The Grantee certifies by signing this grant that it is not presently debarred, declared ineligible or voluntarily excluded from participation in transactions with the State. Grantee must be an approved vendor with the Office of Management and Budget within the State of North Dakota as required by N.D.C.C. § 5444.409.



SECTION 5 AUTHORITY TO CONTRACT

Grantee may not contract for or on behalf of, or incur obligations on behalf of, Grantor.

SECTION 6 INDEPENDENT ENTITY

Grantee shall perform as an independent entity under this grant. Grantee, its employees, agents, or representatives are not employees of the Grantor for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workers' Compensation Act. No part of this grant may be construed to represent the creation of an employer/employee relationship between Grantor and Grantee. Grantee will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Grantee's activities and responsibilities under this grant.

SECTION 7 AUDIT RESPONSIBILITY AND EXPENSE ALLOWABILITY

Grantee agrees to keep financial records necessary to fully disclose the complete financial status of the grant. Grantee must submit documentation supporting requests for reimbursement for review by Grantor or its agents, upon request. Financial records and other relevant documentation must be maintained for at least three years from the close of this grant.

The Grantee will immediately notify the Grantor of any credible evidence that a principal, employee, agent, contractor, subcontractor or other person has submitted a false claim in the course of this agreement.

SECTION 8 TERMINATION OF GRANT FOR CAUSE

The Grantor by written notice of default to the Grantee may terminate the whole or any part of this grant:

1. If the Grantee fails to provide services required by this grant within the time specified or any extension agreed to by the Grantor;
2. Or If the Grantee fails to perform any of the other provisions of this grant, or so fails to pursue the work as to endanger performance of this grant in accordance with its terms.

The rights and remedies of the Grantor provided in the above clause related to defaults by the Grantee are not exclusive and are in addition to any other rights and remedies provided by law or under this grant.

SECTION 9 TERMINATION FOR LACK OF FUNDING OR AUTHORITY

The Grantor may terminate this grant effective upon delivery of written notice to the Grantee, or on any later date stated in the notice, under any of the following conditions:



1. If funding from state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The grant may be modified by mutual consent of the parties in writing to accommodate a reduction in funds.
2. If state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this grant or are no longer eligible for the funding proposed for payments authorized by this grant.
3. If any license, permit or certificate required by law or rule, or by the terms of this grant, is for any reason denied, revoked, suspended or not renewed.
4. Termination of this grant under this section is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

SECTION 10 INDEMNITY

The Grantor and the Grantee each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

SECTION 11 INSURANCE

Grantee shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverage:

1. Commercial general liability, including premises or operations, contractual, and products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
2. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
3. Workers compensation coverage meeting all statutory requirements. The insurance coverage listed above must meet the following additional requirements:
 1. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Grantee. The amount of any deductible or self-retention is subject to approval by the State.
 2. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
 3. The insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be



canceled or modified without thirty (30) days' prior written notice to the undersigned State representative.

4. The Grantee shall furnish a certificate of insurance to the undersigned State representative upon request.
5. Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

SECTION 12 INTEGRATION, MODIFICATION, AND SEVERABILITY

This grant constitutes the entire grant between the Grantee and the Grantor. No alteration, amendment, or modification of this grant shall be effective unless it is reduced to writing, signed by the parties and attached hereto. If any term of this grant is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the grant does not contain the illegal or unenforceable term.

SECTION 13 COLLATERAL CONTRACTS

Where there exists any inconsistency between this grant and other provisions of collateral contractual agreements that are made a part of this grant by reference or otherwise, the provisions of this grant shall control.

SECTION 14 APPLICABLE LAW

This grant is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this grant must be brought in the District Court of Burleigh County, North Dakota.

SECTION 15 COMPLIANCE WITH PUBLIC RECORDS LAWS

Grantee understands that the Grantor must disclose to the public upon request any records it receives from Grantee. Grantee further understands that any records which are obtained or generated by the Grantee under this grant may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Grantee agrees to contact the Grantor immediately upon receiving a request for information under the open records law and to comply with the Grantor's instructions on how to respond to the request.



SECTION 16 ATTORNEY FEES

The Grantor and the Grantee each agree to assume responsibility for its own attorneys' fee which may in any manner result from or arise out of this agreement.

SECTION 17 ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

The Grantor does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The Grantor does not waive any right to a jury trial.

SECTION 18 NECESSARY LICENSING/PERMITS

The Grantee is responsible for obtaining any necessary licenses and/or permits and for complying with applicable federal, state and municipal laws, codes, and regulations in connection with the execution of the work hereunder. The Grantee will take proper safety and health precautions to protect the workers, the public, the environment and the property.

Furthermore, the Grantee is required to employ appropriately licensed individuals on projects involving electrical, plumbing, boiler and sprinkler work in accordance with state laws and regulations. If hiring contractors to complete approved project activities, the contractors must be licensed through the State of North Dakota as required in Century Code 43-07-02. The Grantor will only reimburse payments to licensed contractors.

SECTION 19 REQUIREMENTS OF THE GRANTEE

- The Grantee understands that the Grantor may conduct site visits and file reviews to assure compliance with the terms and conditions of this agreement and will review technical performance after project completion to ensure that the agreement objectives have been accomplished.
- The Grantor reserves the right to request follow up energy records to review energy records to confirm energy savings.
- The Grantee must follow its own procurement policies when securing contractors and/or equipment.
- The Grantee is required to adhere to the North Dakota State Health Department's requirements for solid waste management and EPA's Renovation, Repair and Painting Rules.



SECTION 20 OTHER ARTICLES OF THE GRANT AGREEMENT

- The Grantee will be the sole owner of equipment and/or other approved purchases under this Grant Agreement and accepts sole responsibility of any further costs or liabilities associated with such equipment/purchases.
- The Grantee has completed the Section 106 Clearance Form with its application and will adhere to the requirements of the National Historic Preservation Act as it pertains to this project.
- The Grantor shall not be responsible for any obligation to the Grantee for (1) decontamination and/or decommissioning (D&D) of any of the Grantee's facilities, or (2) any costs which may be incurred by the Grantee in connection with the D&D of any of its facilities due to the performance of the work performed under this agreement, whether said work was performed prior to or subsequent to the effective date of this agreement.
- The Grantor shall not be liable to or indemnify any third party with respect to any claim, debt, damage or demand arising during the implementation of this Grant Agreement and which may be made against the Grantor.
- The Grantor shall not accept liability for compensation for the death, disability or other hazards which may be suffered by the employees and/or clients of the Grantee as a result of their activities associated with the subject matter of this Grant Agreement.
- The Grantor shall not be liable for any expenditure incurred in excess of its contribution as specified in this Grant Agreement.
- The Grantee shall notify the Grantor immediately upon discovery of any financial and/or operational irregularities in connection with this grant award, and submit a written report as directed by the Grantor of the known details of the irregularities.

SECTION 21 SIGNATURES

The Grantor and Grantee shall each receive one signed copy of the Grant Agreement, which will serve as official documents in all legal and literal interpretations.

Grantor:

Maria Effertz Hanson, DCS Division Director
Commerce Department

Date

Grantee:

Tim Mahoney, Mayor
City of Fargo

Date



ENERGY SAVINGS ANALYSIS

NORTH DAKOTA DEPARTMENT OF COMMERCE

DIVISION OF COMMUNITY SERVICES

SFN 59261 (01/21)

Directions: Please have your engineering firm, utility, vendor, energy auditor, etc. complete the form to verify energy savings. Note: Not all boxes may apply to your project. If you have questions about this form, please contact Bruce Hagen at (701) 665-4496 or bahagen@nd.gov.

Utility Rate Information

Cost/Unit KW	Cost/Unit kWh	Cost/Unit Ntr. Gas	Cost/Unit Water	Other
0.09				

Energy Savings

Energy Conservation Measure (ECM)	Annual Demand Savings (KW)	Annual Electric Savings (kWh)	Annual Fossil Fuel Savings (mmBtu)	Annual Water Savings (1,000 Gal.)
LED Lighting - Fargo Public Works west		26166		
Total	0	26166	0	0

Energy Cost Savings. Calculate by multiplying Utility Rate Information by Energy Savings.

Energy Conservation Measure (ECM)	Annual Demand Cost Savings (KW)	Annual Electric Cost (kWh)	Annual Fuel Cost Savings (mmBtu)	Annual Water Cost Savings	Total ECM Energy Cost Savings
LED Lighting	\$	\$ 2354.94	\$	\$	\$ 2354.94
	\$	\$	\$	\$	\$ 0
	\$	\$	\$	\$	\$ 0
Total	\$ 0	\$ 2354.94	\$ 0	\$ 0	\$ 2354.94
Total Project Energy Cost Savings					\$ 2354.94

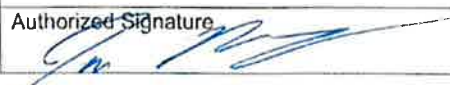
Payback. Provide the following information about and savings generated by this ECM.

Total Project Investment	Total Project Energy Cost Savings	Simple Payback Years
\$ 9860	\$ 2354.94	4.19

Describe the basis for the estimated savings generated by this ECM:
Replace the fluorescent lighting in the main cubicle area, front lobby and kitchen

Certification:

I, the undersigned representative of Hope Electric Inc. (Company), certify that to the best of my knowledge this information is true and correct.

Name (Please Print)	Title
Jason McCullough	Project manager / estimator
Authorized Signature	Date
	01/20/2022

For Commerce Use Only

Verified	X	Authorized Signature
Date	1-21-2022	<i>Bruce A. Hagen</i>

Input
Output

Lighting System Payback Analysis



Customer Information

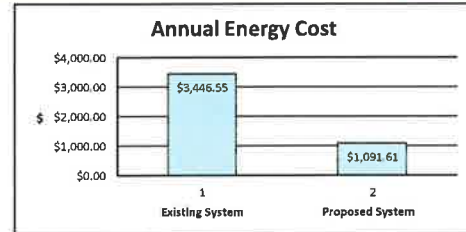
Facility Information

Project: City of Fargo

Cost Per kWh \$0.09

Existing System						Proposed System						
Room Description	Luminaire Description	Fixture Count	Watts/ Fixture	Hrs. Burned Per Yr.	Energy \$ Per Yr.	Luminaire Description	Fixture Count	Watts/ Fixture	Hrs. Burned	Per Luminaire Cost	Per Luminaire Rebate	Energy \$ Per Yr.
	2x4 fluorescent fixtures	18	117	3000	\$568.62	LED flat panel 2x4	24	44.5	3000			\$288.36
	2x2 fluorescent fixtures	82	120	3000	\$2,656.80	LED flat panel 2x2	82	31.5	3000			\$697.41
	4 lamp fluorescent	7	117	3000	\$221.13	LED tubes	28	14	3000			\$105.84
					\$0.00							\$0.00
					\$0.00							\$0.00
					\$0.00							\$0.00
					\$0.00							\$0.00

	Existing System	Proposed System
System Watts	12765	4043
System kW	12.765	FALSE
Annual Energy Costs	\$3,446.55	\$1,091.61
Monthly Energy Costs	\$287.21	\$90.97
Total System Cost		\$0.00
Labor/Disposal/Tax/misc material/etc.		\$9,860.00
Total System Rebate		\$0.00
Total Project Price After Rebate		\$9,860.00



Payback Analysis

Annual Energy Savings	\$2,354.94
Simple Payback (Years)	4.19
Ten Year Energy Cash Flow	\$13,689.40

Note: These are estimated savings only. These annual and monthly savings are based on a number of variables and assumptions that could change over time. The actual savings derived by your company may be higher or lower.



Phone: 701.241.8140 | Fax: 701.241.8558
www.MATBUS.com

MATBUS

Administrative Offices
650 23rd Street North
Fargo, ND 58102

February 7, 2022

City Commission
225 N 4th Street
Fargo, ND 58102

Dear Commission:

Background:

The City's existing five-year contract with First Transit for transit management and driver services expires December 31, 2022 with one three-year extension option. Within this agreement, minimum wages and benefits for the contractor's drivers are outlined (**Attachment 1: Appendix 15** from the City's contract with First Transit). Unfortunately, at the outlined wages, Transit remains several drivers short of the number of drivers required to maintain regular transit service levels.

Transit has been experiencing significant driver shortages for both fixed route and paratransit for approximately 18 months with minimal disruptions to transit service, however, many drivers have either left the organization or expressed serious concerns about fatigue and the excessive amount of overtime being requested to cover basic transit service levels. In addition, the low local unemployment rate has significantly impacted Transit's ability to recruit and retain drivers. Lastly, new commercial driver license (CDL) training requirements will go into effect February 7, 2022, further impacting Transit's recruitment efforts.

On January 10, 2022 Fargo Transit decreased transit services as follows:

- Two Route 14/11's have been removed
- One Route 13 has been removed
- Route 15 has been changed back to 15 and 45 after and a third route 15 has been added between 10:00 am and 6:00 pm
- Route 32W and one Route 33 bus have been removed
- Night service now ends at 9:45 pm vs our normal time of 11:15 pm

These service adjustments helped Fargo save 9 drivers during the week (with NDSU) and 6 drivers on Saturday.

In response to the current driver situation, we are proposing increasing wages for drivers. The attached proposed wage scale (**Attachment 2**) would increase driver's wages by 10% and move drivers to an 11-step wage scale range, allowing drivers to reach the top of their wage range in eleven years vs the current 30-year scale. Starting pay would go from \$19.30/hour to \$21.23/hour effective January 24, 2022.

In addition, if driver wages are increased (drivers are contract employees), we need to be cognizant of the impact the changes would have on our dispatch staff (dispatchers are City of Fargo employees) – the increases as proposed will put the dispatchers at wages below the drivers. We have been experiencing significant dispatcher shortages during the same time we have with drivers. To balance

wages and respond to an unsteady employment market, we are also proposing a market adjustment to increase to the existing dispatcher's wages.

In addition to Attachment 1 (current driver wage scale), there are three spreadsheets attached to this memo:

- **Attachment 2** outlines the minimum wages for drivers with a 10% increase across the board and the cap of a 10-year wage scale – the total cost would be approximately \$615,269 **\$337,347** after the savings from route adjustments are applied);
- **Attachment 3** outlines the wages and cost of bringing our dispatch staff up with a 10% increase scenario – the total cost for Fargo would be \$25,141 (this cost would allow us to adopt our Ops Supervisor Heidi Benke's reclassification from a grade 9 to grade 11 which was approved by PEC but did not make it into the budget for 2022 along with all the other changes);
- **Attachment 4** outlines the savings the current route adjustments for the City of Fargo will produce, approximately \$277,922 – this amount will make up about 45% of the additional amount requested.

The Bipartisan Infrastructure Bill, which replaces the former transportation FAST Act bill, will allocate a steady revenue increase over the course of the next 4-5 years for Transit. In addition, we will plan to incorporate a less significant impact to our 2023 budget when negotiating with the contractor. The increased revenues and budget strategy will assist in offsetting increased costs.

The cumulative goal of these adjustments is to have Transit fully staffed with drivers and dispatchers and allow us to return to full-service levels effective May 13, 2022.

The Finance Committee approved a 10%, 10-year scale on January 31, 2022 with an overall increase to the City of Fargo of \$337,347 after cost savings from route suspensions were taken into account. Following the approval by the Finance Committee, the City of Moorhead determined the proposed increase was not attainable from their perspective, so they counter proposed a lesser increase and a scale of 11-steps vs 10-years maximum wage scale. The proposal allows drivers to receive an overall increase. The cost to the City of Fargo, with the reduced amount, will be an additional **\$422,331.05 (\$144,409.05** after cost savings from route adjustments are applied).

Recommended Motion:

Approve the proposed adjustments in driver and dispatcher wages at the amounts outlined effective January 24, 2022 and authorize staff to finalize a contract amendment between the City of Fargo and First Transit, Inc., incorporating these changes.

Sincerely,


Julie Bommelman
Transit Director

/attachments

APPENDIX 15

MINIMUM WAGES AND BENEFITS
Fixed Route and Paratransit Drivers**Probationary Period:**

The Cities of Fargo and Moorhead require a one-year probationary period for all employees hired under this contract. Performance reviews shall be given to each employee at 90-days, at the end of the probation period and no less than annually thereafter. Performance reviews shall be given to each employee after initial hire within 90-days and annually thereafter.

Seniority:

Existing seniority will be honored in length of service and wages the employee hire date shall be the first day the employee drives a vehicle in revenue service after completion of training. Employees will be paid, according to the step progression scale listed below, based on years of service from their original hire date.

Change of employment status is anytime the employee switches from full-time to part-time or part-time to full-time, or anytime an employee changes from one department to another (i.e. Bus Operator to Dispatcher).

Wages and Benefits:

Bus operators working at least 32 hours per week shall be guaranteed, **at a minimum**, the **wages and benefits** listed below during the term of this contract.

*In future or option years, the minimum wages for each year shall be no less than the previous year's wages plus the "Consumer Price Index (CPI) All Urban Consumers for Midwest Region Size Class B/C Services" for the percent change for the previous twelve months. If the CPI is less than zero, the minimum wages shall be the previous year's wages unless the Contractor and/or City demonstrate there are circumstances requiring a wage increase above the CPI, the Contractor or City may negotiate the rate.

MINIMUM WAGES IN CONTRACTOR'S PROPOSAL:

Year	Step	Driver Minimum Wage Per Hour 2021	Driver Minimum Wage Per Hour 2022
New Hire Training Wage		15.00	15.50
0	1	\$18.60	\$19.30
>1	2	\$18.96	\$19.66
>2	3	\$19.33	\$20.03
>3	4	\$19.70	\$20.40
>4	5	\$20.21	\$20.91
>5	6	\$20.80	\$21.50
>10	9	\$21.20	\$21.90
>15	10	\$21.61	\$22.31
>20	11	\$22.15	\$22.85
>25	12	\$22.69	\$23.39

- I. Employees who move horizontally on the wage scale in the 5-10-year rate row shall receive a longevity addition of \$.07 per hour to the above rates.
- II. Employees who move horizontally on the wage scale in the 10-15-year rate row shall receive a longevity addition of \$.12 per hour to the above rates.
- III. Employees who move horizontally on the wage scale in the 15-20-year rate row shall receive a longevity addition of \$.17 per hour to the above rates.
- IV. Employees who move horizontally on the wage scale in the 20-25-year rate row shall receive a longevity addition of \$.22 per hour to the above rates.
- V. Employees who move horizontally on the wage scale in the 25+ year rate row shall receive a longevity addition of \$.27 per hour to the above rates.

Paid time off (PTO): (Vacation and Sick Time)

All PTO will be earned on an annual basis as described herein.

Regular PTO:

After the first complete year of employment, upon the employee's personal anniversary hire date, the employee shall receive 7 days regular PTO and the employee shall begin to accrue regular PTO. Regular PTO will be the employee's main PTO and will be used any time the employee needs time off regardless if the time off is sick time or vacation time. All regular PTO hours must be used within 12 months of the employee's annual personal anniversary date or the hours will be forfeited. Upon separation of employment from the contractor during the first year of employment, no payout of regular PTO will be made. Thereafter, upon separation of employment from the contractor, the employee will be paid out for the remaining regular PTO balance.

Banked PTO (Sick Leave):

Banked PTO is an additional PTO benefit an employee receives. An employee will begin accruing banked PTO at .42 days per month beginning upon the employee's personal anniversary hire date. The employee shall have access to their accrued banked PTO (accrued at .42 days per month) after the employee

has completed 90 days of employment. Banked PTO can only be used once the employee has exhausted all their regular PTO hours. Banked PTO hours (up to 40 hours per year (5 days), may be carried over from year to year up to a maximum total of 120 hours,(15 days). Upon separation of employment from the contractor, the employee will **not** be paid out for any of the banked PTO hours balance.

Chart of hours and days are listed below.

Years of Service	Regular PTO (Hours)	BANKED PTO (Hours)	Regular PTO (Days)	BANKED PTO (Days)
0 – 12 Months	0	40	0	5
>1 YR but < 3 YRS	56	40	7	5
>3 YRS but <10 YRS	80	40	10	5
>10 YRS but < 15YRS	120	40	15	5
>15 YRS	160	40	20	5

PTO can only be taken in 4-hour (1/2 Day) or 8-hour (Full Day) increments.

Health / Welfare:

A group health-insurance plan shall be offered to employees working at least 32 hours per week. Health insurance is required to be provided to employees after completion of 90 days of employment. The contractor shall pay a minimum of 70% of a single premium under this plan or, if the employee chooses not to enroll in the health insurance plan, the company shall pay the employee a stipend to spend elsewhere valued at 30% of the single premium.

Paid Holidays: Employees shall be eligible for holiday pay immediately upon employment. Paid holidays are to include: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

401(k):

The contractor is to offer a 401K retirement plan, with a company match.

Short-term Disability Insurance:

Contractor shall pay for a short-term disability insurance policy for all employees and shall pay 100% of the premium.

SRC Hospital Indemnity:

Contractor employees have the option to enroll in First Transit's SRC Hospital Indemnity insurance program. This program offers single to family enrollment options in addition to the medical insurance plans. This program provides our employees' reassurance of financial stability in the event the employee or family members are hospitalized.

Health Savings Account (HSA):

The Contractor health insurance allows for employees to contribute an HSA account. The amount contributed to the account is determined by the employee and may be used for out-of-pocket health care costs.

IRS Section 125 Plan:

During the term of this agreement the Contractor shall, if applicable and allowable by law, allow employees to participate in the IRS Section 125 plan, thus providing pre-tax cost savings to our employees.

Bereavement Leave:

Contractor employees are eligible for bereavement leave the day before, the day of, and the day after an immediate family member's funeral. Immediate family members include, spouse, mother or father, brother or sister, mother-in-law or father-in-law, grandparents of employee or spouse, children of the employees, stepfather, stepmother, stepsister, stepbrother, and stepchildren

Safety Meetings:

Attendance at monthly safety meetings is required. Contractor employees will be paid for time at monthly safety meetings.

Dental Coverage Plans:

Full time Contractor employees may enroll in the contractor's Dental Coverage plan during the enrollment period. The contractor will cover 50% of the single coverage cost for each employee who chooses to enroll in dental coverage.

Life and AD&D Insurance / Voluntary Life and Voluntary AD&D Insurance:

Contractor employees receive ten thousand dollars (\$10,000) in life and AD&D insurance fully paid by the contractor. The employee through voluntary plans may purchase additional life and accidental death and disability insurance.

Vision Insurance:

Contractor employees have the option to enroll in the contractor's vision insurance program. This program offers single to family enrollment options to help ensure vision care is affordable to all contractor employees.

Safety and Customer Service Incentives:

The following Contractor employee incentive programs proposed by the Contractor are targeted to increase driver retention, minimize safety infractions, minimize absenteeism, improve driver reliability and enhance service quality.

All the incentives or bonuses outlined below and paid to employees will be billed to the City of Fargo and City of Moorhead as a pass-through cost based on actual payments made and included on each City's regular monthly invoices.

The new operator sign-on bonus and referral bonus will be only implemented if pre-approved by both the City of Fargo and City of Moorhead based on the current need for recruitment, such as lack of qualified driver applications.

New Operator Sign-On Bonus:

The minimum bonus of \$500 can be increased up to \$2,500 based on the demands of the recruitment needs.

Bonus will be split into 3 pay out time of equal value:

Entering into Revenue Service

At 60 Days

At 180 Days

Employee Referral Bonus:

The bonus is paid to both the current employee and their referrals at:

60 days = \$500

180 days = \$500

Safety Bonus:

An employee who performs their job exhibiting superior safety habits and behaviors will be rewarded! The monthly payment for each employee who achieves safety goal is \$50.00 for full time employees and \$25.00 for part time employees. Employees who receive this bonus for the entire quarter (3 months) will be given an additional bonus of \$100.00 for full time employees and \$50.00 for part time employees. Part-Time employees must work at least 40 hours per month in order to receive this bonus.

Eligibility requirements:

- The employee must complete a pre/post trip inspection each day they work
- The employee must have no preventable collisions or passenger injuries
- The employee has no preventable safety incidents resulting in any personal/passenger injury, damage, or other safety related issues
- The employee must have no traffic violations in company or personal vehicles
- Attend Monthly Safety Meeting
- Fewer than three (3) coachable DriveCam clips monthly

Incentive Bonus:

The Incentive Bonus program will reward employees that provide excellent customer service, have perfect attendance, and exhibit superior performance and behavior when performing all job functions. Contractor employees have the opportunity to earn an additional \$1,000.00 per year. This bonus will be paid out at \$50.00 per month for full time employees who achieve the requirements listed below. Any full-time employee who has achieved this bonus for the entire quarter (3 months) will be given an additional \$100.00 at the end of the quarter. Part-time employees are not eligible for this bonus.

Eligibility requirements:

- No substantiated passenger complaints or incidents
- Monthly Average OTP above 90% for fixed drivers and 95% for para drivers, unless there is a reasonable explanation, such as weather events, traffic delays, and construction detours, passenger related delays, event traffic, dispatch issues, routing issues or other circumstances outside of the Bus Operator's control.
- Have a perfect attendance record
 - Zero attendance points for current month (Late, absent, etc.)
- Be in a full and clean uniform at all times (shirt, trousers, tie, and plain black shoes)
- Completing and turning in all paperwork with no missing information; including: Manifests, DVIR for Pre and Post trip inspections, Payroll exception forms
- No ADA Violations (i.e. P.A. Announcements, lowering ramp/kneeler)
- Attended the monthly safety meetings
- Having no other discipline incidents / actions

Quarterly payouts will be paid on the following scale.

Quarter	Start Month		End Month	Payout Month
1	January	-	March	April
2	April	-	June	July
3	July	-	September	October
4	October	-	December	January

Based on Current Wage Scale				Moved to 11 step Scale				Current Headcounts			
# Yrs	Current Scale	2022 Top @ 10 yrs	Proposed Rate	Incr Amt	% Incr	# Yrs	Current Scale	Proposed Rate	Incr Amt	% Incr	# of EE
0-1	\$ 19.30	\$ 19.30	\$ 21.23	\$ 1.93	10.00%	0-1	\$ 19.30	\$ 21.23	\$ 1.93	10.00%	26
1-2	\$ 19.66	\$ 19.66	\$ 21.59	\$ 1.93	9.82%	1-2	\$ 19.66	\$ 22.02	\$ 2.36	11.99%	5
2-3	\$ 20.03	\$ 20.03	\$ 21.96	\$ 1.93	9.64%	2-3	\$ 20.03	\$ 22.80	\$ 2.77	13.85%	12
3-4	\$ 20.40	\$ 20.40	\$ 22.33	\$ 1.93	9.46%	3-4	\$ 20.40	\$ 23.68	\$ 3.28	16.08%	5
4-5	\$ 20.77	\$ 20.77	\$ 22.70	\$ 1.93	9.28%	4-5	\$ 20.77	\$ 24.56	\$ 3.79	18.25%	5
5-6	\$ 21.14	\$ 21.14	\$ 23.07	\$ 1.93	9.10%	5-6	\$ 21.14	\$ 25.44	\$ 4.30	20.34%	3
6-7	\$ 21.51	\$ 21.51	\$ 23.44	\$ 1.93	8.92%	6-7	\$ 21.51	\$ 26.32	\$ 4.81	22.36%	9
7-8	\$ 21.88	\$ 21.88	\$ 23.81	\$ 1.93	8.75%	7-8	\$ 21.88	\$ 27.20	\$ 5.32	24.38%	5
8-9	\$ 22.25	\$ 22.25	\$ 24.18	\$ 1.93	8.57%	8-9	\$ 22.25	\$ 28.08	\$ 5.83	26.40%	5
9-10	\$ 22.62	\$ 22.62	\$ 24.55	\$ 1.93	8.40%	9-10	\$ 22.62	\$ 28.96	\$ 6.34	28.42%	5
10-11	\$ 22.99	\$ 22.99	\$ 24.92	\$ 1.93	8.22%	10-11	\$ 22.99	\$ 29.84	\$ 6.85	30.44%	2
11-12	\$ 23.36	\$ 23.36	\$ 25.29	\$ 1.93	8.04%	11-12	\$ 23.36	\$ 30.72	\$ 7.36	32.46%	6
12-13	\$ 23.73	\$ 23.73	\$ 25.66	\$ 1.93	7.86%	12-13	\$ 23.73	\$ 31.60	\$ 7.87	34.48%	6
13-14	\$ 24.10	\$ 24.10	\$ 26.03	\$ 1.93	7.68%	13-14	\$ 24.10	\$ 32.48	\$ 8.38	36.50%	6
14-15	\$ 24.47	\$ 24.47	\$ 26.40	\$ 1.93	7.50%	14-15	\$ 24.47	\$ 33.36	\$ 8.89	38.52%	6
15-16	\$ 24.84	\$ 24.84	\$ 26.77	\$ 1.93	7.32%	15-16	\$ 24.84	\$ 34.24	\$ 9.40	40.54%	6
16-17	\$ 25.21	\$ 25.21	\$ 27.14	\$ 1.93	7.14%	16-17	\$ 25.21	\$ 35.12	\$ 9.91	42.56%	6
17-18	\$ 25.58	\$ 25.58	\$ 27.51	\$ 1.93	6.96%	17-18	\$ 25.58	\$ 36.00	\$ 10.42	44.58%	6
18-19	\$ 25.95	\$ 25.95	\$ 27.88	\$ 1.93	6.78%	18-19	\$ 25.95	\$ 36.88	\$ 10.93	46.60%	6
19-20	\$ 26.32	\$ 26.32	\$ 28.25	\$ 1.93	6.60%	19-20	\$ 26.32	\$ 37.76	\$ 11.44	48.62%	7
20-21	\$ 26.69	\$ 26.69	\$ 28.62	\$ 1.93	6.42%	20-21	\$ 26.69	\$ 38.64	\$ 11.95	50.64%	7
21-22	\$ 27.06	\$ 27.06	\$ 28.99	\$ 1.93	6.24%	21-22	\$ 27.06	\$ 39.52	\$ 12.46	52.66%	7
22-23	\$ 27.43	\$ 27.43	\$ 29.36	\$ 1.93	6.06%	22-23	\$ 27.43	\$ 40.40	\$ 12.97	54.68%	7
23-24	\$ 27.80	\$ 27.80	\$ 29.73	\$ 1.93	5.88%	23-24	\$ 27.80	\$ 41.28	\$ 13.48	56.70%	8
24-25	\$ 28.17	\$ 28.17	\$ 30.10	\$ 1.93	5.70%	24-25	\$ 28.17	\$ 42.16	\$ 13.99	58.72%	8
25-26	\$ 28.54	\$ 28.54	\$ 30.47	\$ 1.93	5.52%	25-26	\$ 28.54	\$ 43.04	\$ 14.50	60.74%	8
26-27	\$ 28.91	\$ 28.91	\$ 30.84	\$ 1.93	5.34%	26-27	\$ 28.91	\$ 43.92	\$ 15.01	62.76%	8
27-28	\$ 29.28	\$ 29.28	\$ 31.21	\$ 1.93	5.16%	27-28	\$ 29.28	\$ 44.80	\$ 15.52	64.78%	9
28-29	\$ 29.65	\$ 29.65	\$ 31.58	\$ 1.93	4.98%	28-29	\$ 29.65	\$ 45.68	\$ 16.03	66.80%	9
29-30	\$ 30.02	\$ 30.02	\$ 31.95	\$ 1.93	4.80%	29-30	\$ 30.02	\$ 46.56	\$ 16.54	68.82%	10
											11

Proposed Rate: Top 7 drivers combined rates \$ 26.29
Proposed Rate: Overall Driver Avg Rate \$ 23.09

Current Wage Structure				Proposed Rate Structure			
Year	Step	Driver Minimum Wage Per Hour 2021	Driver Minimum Wage Per Hour 2022	Year	Step	Driver Minimum Wage Per Hour 2022	Driver Minimum Wage Per Hour 2024
New Hire & Training Wage	1	\$ 15.00	\$ 15.50	New Hire & Training Wage	1	\$ 15.00	\$ 21.23
	2	\$ 16.00	\$ 16.50		2	\$ 16.00	\$ 22.02
	3	\$ 17.00	\$ 17.50		3	\$ 17.00	\$ 22.80
	4	\$ 18.00	\$ 18.50		4	\$ 18.00	\$ 23.59
	5	\$ 19.00	\$ 19.50		5	\$ 19.00	\$ 24.38
	6	\$ 20.00	\$ 20.50		6	\$ 20.00	\$ 25.17
	7	\$ 21.00	\$ 21.50		7	\$ 21.00	\$ 25.95
	8	\$ 22.00	\$ 22.50		8	\$ 22.00	\$ 26.74
	9	\$ 23.00	\$ 23.50		9	\$ 23.00	\$ 27.53
	10	\$ 24.00	\$ 24.50		10	\$ 24.00	\$ 28.31
	11	\$ 25.00	\$ 25.50		11	\$ 25.00	\$ 29.10

6.82% step 1 to 2
6.68% step 2 to 3

3.00% 2023
3.00% 2024

**4.1-SUPPLEMENTARY INFORMATION /ESTIMATED BUDGET
TO SUPPORT BID PRICE**

**C. DRIVER SERVICES-FIXED ROUTE: DRIVER RATE INCREASE TO \$21.23 PER HOUR -
11 STEP PROGRESSION**

	<u>Year 2</u>	Original Contract <u>Year 2</u>	<u>Variance</u>
ASSUMPTIONS:			
Driver Hours (including deadhead)	131,137	131,137	0
Driver Training Hours	6,979	6,979	0
Subtotal Hours	138,116	138,116	0
			\$0
LABOR:			\$0
Full-time Drivers Wages	\$ 3,163,994	\$ 2,829,304	\$ 334,690
Part-time Drivers Wages	\$ 171,490	\$ 153,350	\$ 18,140
Substitute Drivers Wages	\$ -	\$ -	\$ -
Subtotal Wages	\$ 3,335,484	\$ 2,982,654	\$ 352,830
			\$ -
Fringe Benefits	\$ 377,862	\$ 374,756	\$ 3,106
Workers Compensation	\$ 164,605	\$ 146,278	\$ 18,327
Unemployment Ins.	\$ 89,630	\$ 89,630	\$ -
Employment Taxes	\$ 270,165	\$ 240,085	\$ 30,080
Subtotal Benefits/Taxes	\$ 902,262	\$ 850,750	\$ 51,513
			\$ -
SUBTOTAL Labor	\$ 4,237,747	\$ 3,833,404	\$ 404,343
			\$ -
OTHER:			\$ -
Training	\$ 195,189	\$ 154,816	\$ 40,373
Drug & Alcohol Testing	\$ 24,060	\$ 24,060	\$ -
Office Supplies	\$ -	\$ -	\$ -
Equipment Lease	\$ -	\$ -	\$ -
Incentives & Awards Program	\$ -	\$ -	\$ -
Other (<i>Recruiting</i>)	\$ 1,816	\$ 1,816	\$ -
Other (<i>Employee Welfare</i>)	\$ 6,306	\$ 6,306	\$ -
			\$ -
			\$ -
			\$ -
SUBTOTAL Other	\$ 227,371	\$ 186,999	\$ 40,373
			\$ -
GRAND TOTAL	<u>\$ 4,465,118</u>	<u>\$ 4,020,402</u>	<u>\$ 444,716</u>
			0
REVENUE HOURS	120,432.26	120,432.26	0.00
			0
COST PER HOUR	\$37.08	\$33.38	\$3.69
			0
Fringe Benefits as a % of Wages	11%	13%	-1%
			0
FARGO COST	\$3,142,626	\$2,829,627	\$312,998
MOORHEAD COST	\$1,322,493	\$1,190,775	\$131,717

**4.1-SUPPLEMENTARY INFORMATION / ESTIMATED BUDGET
TO SUPPORT BID PRICE**

**B. DRIVER SERVICES - MAT PARATRANSIT: DRIVER RATE INCREASE TO \$21.23
PER HOUR - 11 STEP PROGRESSION**

	<u>Year 2</u>	Original Contract	
		<u>Year 2</u>	<u>Variance</u>
ASSUMPTIONS:			
Driver Hours (including deadhead)	24,278	24,278	0
Driver Training Hours	<u>1,292</u>	<u>1,292</u>	<u>0</u>
Subtotal Hours	25,570	25,570	0
			\$0
LABOR:			
			\$0
Full-time Drivers Wages	\$ 585,770	\$ 523,806	\$ 61,963
Part-time Drivers Wages	\$ 31,749	\$ 28,391	\$ 3,358
Substitute Drivers Wages	\$ -	\$ -	\$ -
Subtotal Wages	\$ 617,519	\$ 552,197	\$ 65,322
			\$ -
Fringe Benefits	\$ 69,956	\$ 69,381	\$ 575
Workers Compensation	\$ 30,474	\$ 27,081	\$ 3,393
Unemployment Ins.	\$ 16,594	\$ 16,594	\$ -
Employment Taxes	<u>\$ 50,017</u>	<u>\$ 44,448</u>	<u>\$ 5,569</u>
Subtotal Benefits/Taxes	\$ 167,041	\$ 157,504	\$ 9,537
			\$ -
SUBTOTAL Labor	\$ 784,560	\$ 709,701	\$ 74,859
			\$ -
OTHER:			
			\$ -
Training	\$ 36,136	\$ 28,662	\$ 7,474
Drug & Alcohol Testing	\$ 4,454	\$ 4,454	\$ -
Office Supplies	\$ -	\$ -	\$ -
Recruiting	\$ -	\$ -	\$ -
Incentives & Awards Program	\$ -	\$ -	\$ -
Other (<i>Recruiting</i>)	\$ 336	\$ 336	\$ -
Other (<i>Employee Welfare</i>)	\$ 1,168	\$ 1,168	\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
SUBTOTAL Other	\$ 42,095	\$ 34,620	\$ 7,474
			\$ -
GRAND TOTAL	<u>\$ 826,655</u>	<u>\$ 744,322</u>	<u>\$ 82,333</u>
			\$0
REVENUE HOURS	23,111.52	23,111.52	0.00
			\$0
COST PER HOUR	\$ 35.77	\$ 32.21	\$ 3.56
			0%
FARGO COST (81%)	\$ 669,590	\$ 602,901	\$ 66,690
MOORHEAD COST (19%)	\$ 157,064	\$ 141,421	\$ 15,643

4.1-SUPPLEMENTARY INFORMATION /ESTIMATED BUDGET TO SUPPORT BID PRICE

A. MANAGEMENT SERVICES: DRIVER RATE INCREASE TO \$21.23 PER HOUR - 11 STEP PROGRESSION

	Year 2	
ASSUMPTIONS:		
Project Manager Hours	2,080	
Supervisor/Trainer(s) Hours	10,400	
Office/Clerical Staff Hours	2,080	
Other Hours (<i>Operations Mgr</i>)	2,080	
Subtotal Hours	16,640	
LABOR:		
Project Manager Wages	\$ 97,142	
Driver Supervisor/Trainer(s) Wages	\$ 253,311	
Office/Clerical Staff Wages	\$ 50,782	
Other Wages (<i>Operations Mgr</i>)	\$ 70,000	
Subtotal Wages	\$ 471,236	
Fringe Benefits	\$ 96,547	
Workers Compensation	\$ 10,358	
Unemployment Ins.	\$ 8,852	
Employment Taxes	\$ 34,495	
Subtotal Benefits/Taxes	\$ 150,252	
SUBTOTAL Labor	\$ 621,487	
OTHER:		
Travel and Training	\$ 5,125	
Drug & Alcohol Testing	\$ 394	
Office Supplies	\$ 4,520	
Telephone (Cellular)	\$ 3,588	
Equipment Lease	\$ 5,059	
Other (<i>DriveCam</i>)	\$ 27,911	
Other (<i>Technology</i>)	\$ -	
Other (<i>Liquidated Damages</i>)	\$ 30,904	
Other (<i>LD's Collision Only</i>)	\$ 46,899	
Other (<i>Excess Liability Coverage</i>)	\$ 90,125	
Other (<i>Printing</i>)	\$ -	
SUBTOTAL Other	\$ 214,525	
OVERHEAD AND PROFIT	\$ 484,910	
GRAND TOTAL	\$ 1,320,922	

Original Contract

Year 2	Variance
2,080	0
10,400	0
2,080	0
2,080	0
16,640	0
\$0	\$0
\$ 97,592	\$ (450)
\$ 238,170	\$ 15,141
\$ 46,883	\$ 3,899
\$ 66,625	\$ 3,375
\$ -	\$ -
\$ 449,270	\$ 21,965
\$ -	\$ -
\$ 96,466	\$ 82
\$ 9,728	\$ 630
\$ 8,852	\$ -
\$ 32,895	\$ 1,600
\$ 147,940	\$ 2,312
\$ -	\$ -
\$ 597,210	\$ 24,277
\$0	\$0
\$ 5,125	\$ -
\$ 394	\$ -
\$ 4,520	\$ -
\$ 3,588	\$ -
\$ 5,059	\$ -
\$ 27,911	\$ -
\$ -	\$ -
\$ 30,904	\$ -
\$ 46,899	\$ -
\$ 90,125	\$ -
\$ -	\$ -
\$ -	\$ -
\$ 214,525	\$ -
\$ -	\$ -
\$ 484,910	\$ 0
\$ -	\$ -
\$ 1,296,645	\$ 24,278

Do not enter numbers into this section. It will automatically calculate.

MANAGEMENT COST DISTRIBUTION

	Year 2
Fargo Fixed Route	\$ 780,001.53
Mhd Fixed Route	\$ 328,243.42
Paratransit	\$ 212,677.48
TOTAL	\$ 1,320,922.43

VARIANCE

Year 2	Year 2
\$ 765,665.65	\$ 14,335.87
\$ 322,210.54	\$ 6,032.88
\$ 208,768.61	\$ 3,908.86
\$ 1,296,644.81	\$ 24,277.62

ATTACHMENT 3

Current Dispatching Staff Information

Name	Brandi Weverink	Dawn Howland	Michael Laemmerrmann	Andrew Almer	Sandra Koontz	Wayne Rosell	Unfilled Position	Heidi Benke	
Grade	7	7	7	7	7	7	7	7	9
Step	2	4	8	2	1	6	1	5	5
Pay									
Hourly \$	19.35	20.48	22.73	19.35	18.79	21.60	18.79	24.54	Annual Total
Annually \$	40,248	42,598	47,278	40,248	39,083	44,928	39,083	51,043	\$ 344,509

Dispatching Staff Information - 10% Increase (rounded up to the nearest step)

Name	Brandi Weverink	Dawn Howland	Michael Laemmerrmann	Andrew Almer	Sandra Koontz	Wayne Rosell	Unfilled Position	Heidi Benke	
Grade	8	8	8	8	8	8	8	11	
Step	3	5	9	3	2	7	2	3	
Pay									
Hourly \$	21.51	22.73	25.17	21.51	20.90	23.94	20.90	27.10	Annual Total
Annually \$	44,741	47,278	52,354	44,741	43,472	49,795	43,472	56,368	\$ 382,221

Dispatching Staff Information - Difference

Name	Brandi Weverink	Dawn Howland	Michael Laemmerrmann	Andrew Almer	Sandra Koontz	Wayne Rosell	Unfilled Position	Heidi Benke	
Grade	+1	+1	+1	+1	+1	+1	+1	+2	
Step	+1	+1	+1	+1	+1	+1	+1	+0	
Pay									
Hourly \$	2.16	2.25	2.44	2.16	2.11	2.34	2.11	2.56	Annual Total
Annually \$	4,493	4,680	5,076	4,493	4,389	4,867	4,389	5,325	\$ 37,712

* Wages are Increased 10% to Match the Proposed Driver Wage Increase
 * One Additional Step 1 Position was Added for the Dispatch Position Currently Not Filled
 * One of the Step 1 Dispatchers is a Temp. Position

Dispatchers Based on Current Wage Scale			
Step	2022	Proposed Rate	% Incr
1	\$ 18.79	\$ 20.67	1.88
2	\$ 19.35	\$ 21.23	1.88
3	\$ 19.91	\$ 21.79	1.88
4	\$ 20.48	\$ 22.36	1.88
5	\$ 21.04	\$ 22.92	1.88
6	\$ 21.60	\$ 23.48	1.88
7	\$ 22.17	\$ 24.05	1.88
8	\$ 22.73	\$ 24.61	1.88
9	\$ 23.30	\$ 25.18	1.88
10	\$ 23.86	\$ 25.74	1.88
11	\$ 24.42	\$ 26.30	1.88

Dispatch Headcounts			
Step	# of EE	Current Rate	Proposed Rate
1	2	\$ 37.58	\$ 41.34
2	2	\$ 38.70	\$ 42.46
3		\$ -	\$ -
4	1	\$ 20.48	\$ 22.36
5		\$ -	\$ -
6	1	\$ 21.60	\$ 23.48
7		\$ -	\$ -
8	1	\$ 22.73	\$ 24.61
9		\$ -	\$ -
10		\$ -	\$ -
11		\$ -	\$ -
Total Per Week		\$ 5,643.60	\$ 6,169.72
Annual Total		\$ 293,467.20	\$ 320,825.44
Difference			\$ 27,358.24

Operations Supervisor Based on Current Wage Scale			
Step	2022	Proposed Rate	% Incr
1	\$ 21.93	\$ 24.12	2.19
2	\$ 22.56	\$ 24.44	1.88
3	\$ 23.23	\$ 25.11	1.88
4	\$ 23.89	\$ 25.77	1.88
5	\$ 24.54	\$ 26.42	1.88
6	\$ 25.21	\$ 27.09	1.88
7	\$ 25.88	\$ 27.76	1.88
8	\$ 26.53	\$ 28.41	1.88
9	\$ 27.16	\$ 29.04	1.88
10	\$ 27.81	\$ 29.69	1.88
11	\$ 28.50	\$ 30.38	1.88

Operations Supervisor Headcounts			
Step	# of EE	Current Rate	Proposed Rate
1		\$ -	\$ -
2		\$ -	\$ -
3		\$ -	\$ -
4		\$ -	\$ -
5	1	\$ 24.54	\$ 26.42
6		\$ -	\$ -
7		\$ -	\$ -
8		\$ -	\$ -
9		\$ -	\$ -
10		\$ -	\$ -
11		\$ -	\$ -
Total Per Week		\$ 981.60	\$ 1,056.76
Annual Total		\$ 51,043.20	\$ 54,951.52
Difference			\$ 3,908.32

ATTACHMENT 4

2021				2022				Difference			
Month	Description	Hours	Rate	Amount	Month	Description	Hours	Rate	Amount	Month	Description
January	Reg Service Mon - Fri	4815.2	\$ 31.91	\$ 153,653.03	January	Reg Service Mon - Fri	3913.82	\$ 31.91	\$ 124,890.00	January	Reg Service Mon - Fri
	Saturday Service	1013.9	\$ 31.91	\$ 32,350.36		Saturday Service	625.76	\$ 31.91	\$ 19,968.00		Saturday Service
	NDSU Service Mon - Fri	1078.84	\$ 31.91	\$ 34,423.78		NDSU Service Mon - Fri	855.15	\$ 31.91	\$ 27,287.84		NDSU Service Mon - Fri
	January Total			\$ 220,427.17		January Total			\$ 172,145.83		January Difference
February	Reg Service Mon - Fri	4215.2	\$ 31.91	\$ 135,653.03	February	Reg Service Mon - Fri	3479.4	\$ 31.91	\$ 111,027.65	February	Reg Service Mon - Fri
	Saturday Service	811.04	\$ 31.91	\$ 25,880.29		Saturday Service	564	\$ 31.91	\$ 17,997.24		Saturday Service
	NDSU Service Mon - Fri	1464.14	\$ 31.91	\$ 46,720.71		NDSU Service Mon - Fri	1083.19	\$ 31.91	\$ 34,564.59		NDSU Service Mon - Fri
	February Total			\$ 226,254.03		February Total			\$ 163,599.49		February Difference
March	Reg Service Mon - Fri	5537.48	\$ 31.91	\$ 176,700.99	March	Reg Service Mon - Fri	4091.31	\$ 31.91	\$ 129,681.80	March	Reg Service Mon - Fri
	Saturday Service	811.04	\$ 31.91	\$ 25,880.29		Saturday Service	564	\$ 31.91	\$ 17,997.24		Saturday Service
	NDSU Service Mon - Fri	1387.08	\$ 31.91	\$ 44,261.72		NDSU Service Mon - Fri	1026.18	\$ 31.91	\$ 32,745.40		NDSU Service Mon - Fri
	March Total			\$ 246,843.00		March Total			\$ 179,424.45		March Difference
April	Reg Service Mon - Fri	5286.72	\$ 31.91	\$ 168,018.34	April	Reg Service Mon - Fri	3653.37	\$ 31.91	\$ 116,579.04	April	Reg Service Mon - Fri
	Saturday Service	811.04	\$ 31.91	\$ 25,880.29		Saturday Service	564	\$ 31.91	\$ 17,997.24		Saturday Service
	NDSU Service Mon - Fri	1541.2	\$ 31.91	\$ 49,178.69		NDSU Service Mon - Fri	1083.19	\$ 31.91	\$ 34,564.59		NDSU Service Mon - Fri
	April Total			\$ 244,078.31		April Total			\$ 179,140.87		April Difference
May	Reg Service Mon - Fri	4806.95	\$ 31.91	\$ 153,389.77	May	Reg Service Mon - Fri	4388.06	\$ 31.91	\$ 140,022.99	May	Reg Service Mon - Fri
	Saturday Service	1011.05	\$ 31.91	\$ 32,262.61		Saturday Service	784.28	\$ 31.91	\$ 24,999.52		Saturday Service
	NDSU Service Mon - Fri	1770.6	\$ 31.91	\$ 56,588.85		NDSU Service Mon - Fri	1570.1	\$ 31.91	\$ 50,131.89		NDSU Service Mon - Fri
	May Total			\$ 242,241.23		May Total			\$ 165,154.41		May Difference
Grand Total				\$ 1,147,846.74	Grand Total				\$ 869,924.36	Grand Total	

2021
Reg Service: Mon - Fri 240.76 hours/Day
Saturday Service: 202.76 hours/Day
NDSU Service: Mon - Fri 77.06 hours/Day

2022
Reg Service: Mon - Fri 175.97 hours/Day
Saturday Service: 141.00 hours/Day
NDSU Service: Mon - Fri 57.01 hours/Day

Participant Revenue Expenses are not included.
Does not include management fees, safety bonuses, etc.
January reflects reduced service rates from Nov 8 2021 through Jan 10 2022.
May reflects returning to full service after the target date of May 14.

January 28, 2022

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Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

**Re: Memorandum of Offer to Landowner
Permanent & Temporary Easements – Improvement District #BR-22-A0**

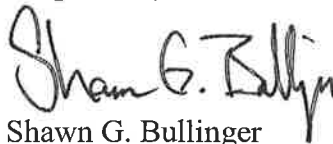
Dear Commissioners:

Enclosed and delivered to the City Commission office are (2) original Memorandum of Offer to Landowner documents for the acquisition of (2) permanent & (2) temporary easements in association with Improvement District #BR-22-A0. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a (2) permanent & (2) temporary easements from **Provident Partners LLC** in association with Improvement District #BR-22-A0 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner & Easement documents on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Jeremy Gorden
Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project BR-22-A1	County Cass	Parcel(s) 8C & 8D
Landowner Provident Partners LLC		
Mailing Address PO Box 9377, Fargo, ND 58106		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:


See attached exhibit(s) to the easements accompanying this Memorandum of Offer.

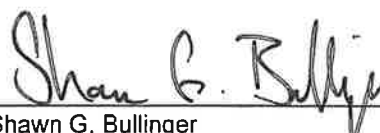
I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 765.80 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	
Easement and Access Control	\$	765.80
Improvements on Right of Way*	\$	
Damages to Remainder	\$	

Total Offer \$ 765.80

*Description of Damages to Remainder are as follows:


 Owner Signature
 Signature hereby constitutes acceptance of offer as presented above.


 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo

Fargo City Commision has considered the offer and approves the same:



Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

PERMANENT EASEMENT
(Street and Utility)

KNOW ALL MEN BY THESE PRESENTS that PROVIDENT PARTNERS, LLC, a North Dakota limited liability company, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, HEREBY GRANTS UNTO THE CITY OF FARGO, NORTH DAKOTA, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing a street and all other public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows:

Parcel 8C

A perpetual easement, over, under and across that part of Lot 1, REPLAT OF BLOCK C OF THE REPLAT OF PART OF RHEAULT ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

The East 5.00 feet of the South 8.00 feet of said Lot 1.

Said parcel contains 40 square feet, more or less, and is subject to existing easements of record.

Said parcel is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts

necessary or convenient to carry into effect the purpose for which the grant is made.

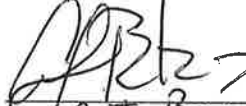
Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said street and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said street and customary appurtenances was begun.

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 24 day of Jan, 2021.

(Signatures on the following pages)

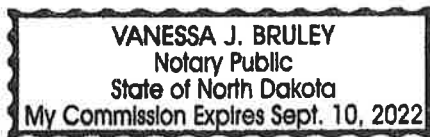
GRANTOR:

Provident Partners, LLC
a North Dakota limited liability company



By: C.J. Bernabucci
Its: Vice President

STATE OF North Dakota)
COUNTY OF Cass) ss.

On this 21st day of January, 2021, before me, a notary public in and for said county and state, personally appeared C.J. Bernabucci, to me known to be the Vice President of **Provident Partners, LLC**, a North Dakota limited liability company, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.



(SEAL)


Notary Public
Cass County, ND

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

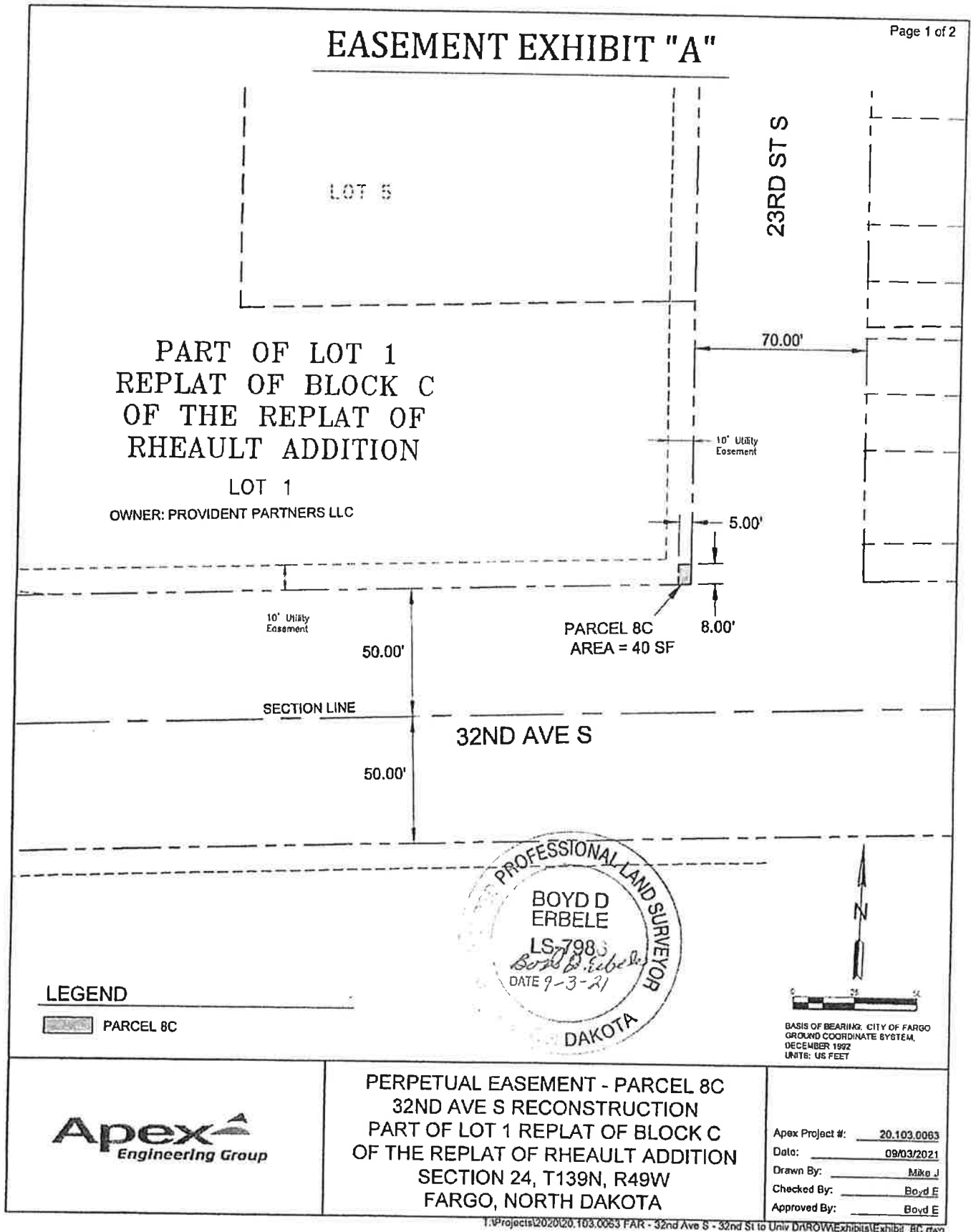
On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

Notary Public
Cass County, ND
My Commission expires:

(SEAL)

The legal description was prepared by:
Boyd D. Erbele
Registered Land Surveyor
LS-7986
Apex Engineering Group
4733 Amber Valley Parkway S.
Fargo, ND 58104
(701) 373-7980

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com



EASEMENT EXHIBIT "A"

Parcel 8C
(Perpetual Easement)

A perpetual easement, over, under and across that part of Lot 1, REPLAT OF BLOCK C OF THE REPLAT OF PART OF RHEAULT ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

The East 5.00 feet of the South 8.00 feet of said Lot 1

Said parcel contains 40 square feet, more or less, and is subject to existing easements of record.



CERTIFICATION

I, Boyd D. Erbele, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.

Signed Boyd D. Erbele
Boyd D. Erbele
North Dakota Professional Land Surveyor
License Number LS-7986

Date 9-3-2021

Apex
Engineering Group

PERPETUAL EASEMENT - PARCEL 8C
32ND AVE S RECONSTRUCTION
PART OF LOT 1 REPLAT OF BLOCK C
OF THE REPLAT OF RHEAULT ADDITION
SECTION 24, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/03/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that PROVIDENT PARTNERS, LLC, a North Dakota limited liability company, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to it in hand paid the receipt whereof is hereby acknowledged, HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of road construction and activities appurtenant thereto, said land being more fully described, to-wit:

Parcel 8D

A temporary easement, over, under and across that part of Lot 1, REPLAT OF BLOCK C OF THE REPLAT OF PART OF RHEAULT ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

The South 25.00 feet of the East 10.00 feet of said Lot 1,

LESS

The South 8.00 feet of the East 5.00 feet thereof.

Said parcel contains 210 square feet, more or less, and is subject to existing easements of record.

Said parcel is pictorially represented on Exhibit "A" attached hereto and incorporated herein by reference.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's

officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.


This easement shall terminate at the completion of construction of the project, or on November 30, 2022, whichever occurs later.

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this 24 day of Jan, 2022.

(Signatures on the following pages)

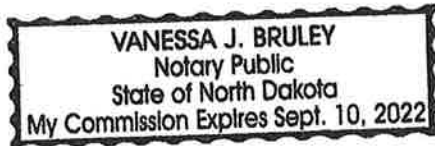
GRANTOR:

Provident Partners, LLC
a North Dakota limited liability company



By: C.J. Bernabucci
Its: Vice President

STATE OF North Dakota)
COUNTY OF Cass) ss.

On this 24th day of January ²²2021, before me, a notary public in and for said county and state, personally appeared C.J. Bernabucci, to me known to be the Vice President of **Provident Partners, LLC**, a North Dakota limited liability company, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.



(SEAL)


Notary Public
Cass County, ND

GRANTEE:

City of Fargo, a North Dakota municipal
corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

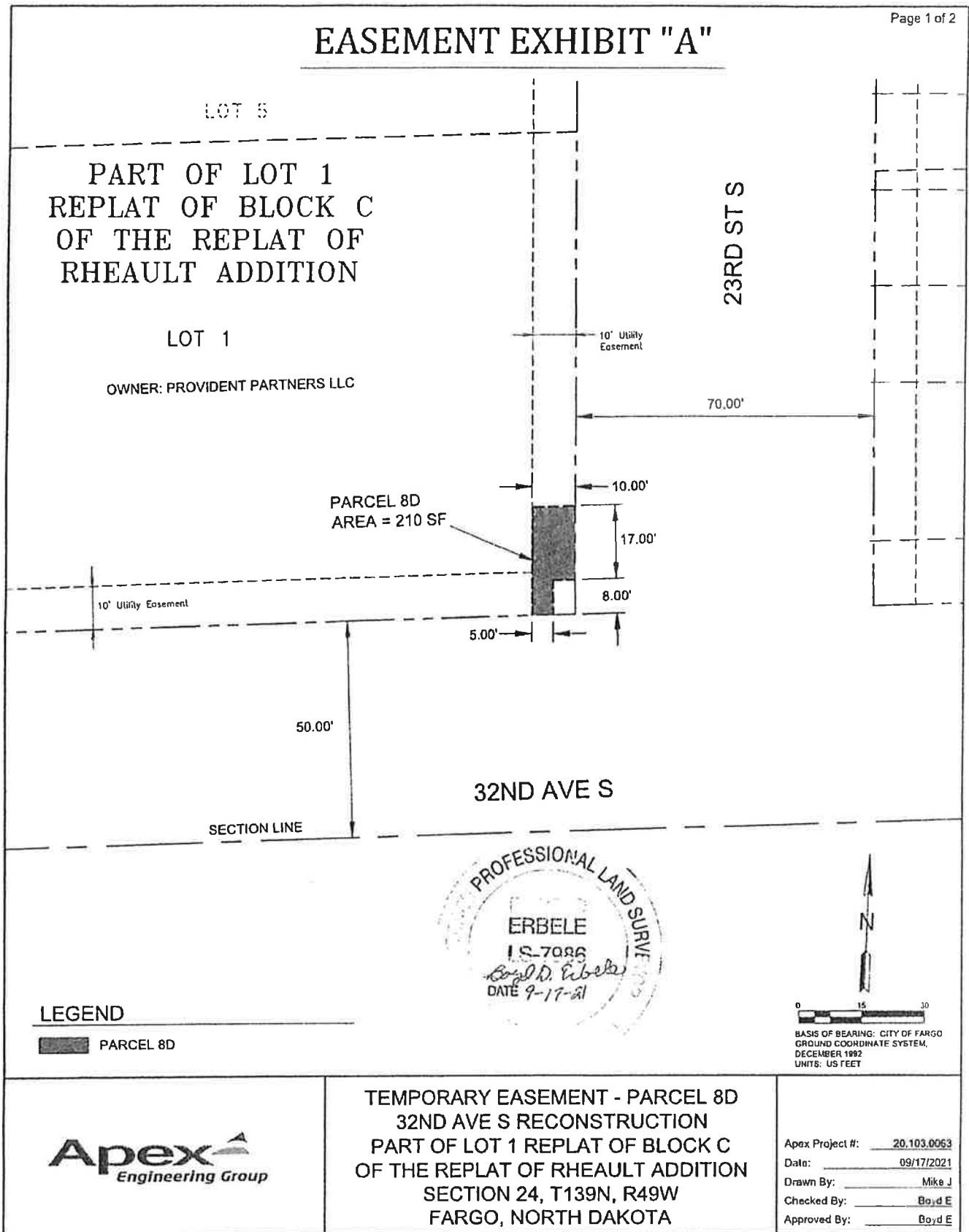
(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
Boyd D. Erbele
Registered Land Surveyor
LS-7986
Apex Engineering Group
4733 Amber Valley Parkway S.
Fargo, ND 58104
(701) 373-7980

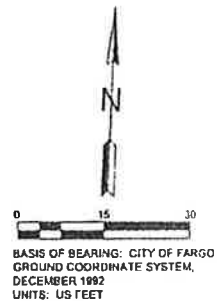
This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

EASEMENT EXHIBIT "A"



LEGEND

■ PARCEL 8D



Apex
Engineering Group

TEMPORARY EASEMENT - PARCEL 8D
32ND AVE S RECONSTRUCTION
PART OF LOT 1 REPLAT OF BLOCK C
OF THE REPLAT OF RHEAULT ADDITION
SECTION 24, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/17/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E

EASEMENT EXHIBIT "A"

Parcel 8D
(Temporary Easement)

A temporary easement, over, under and across that part of Lot 1, REPLAT OF BLOCK C OF THE REPLAT OF PART OF RHEAULT ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

The South 25.00 feet of the East 10.00 feet of said Lot 1,

LESS

The South 8.00 feet of the East 5.00 feet thereof.

Said parcel contains 210 square feet, more or less, and is subject to existing easements of record.



CERTIFICATION

I, Boyd D. Erbele, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.

Signed Boyd D. Erbele
Boyd D. Erbele
North Dakota Professional Land Surveyor
License Number LS-7986

Date 9-17-2021



TEMPORARY EASEMENT - PARCEL 8D
32ND AVE S RECONSTRUCTION
PART OF LOT 1 REPLAT OF BLOCK C
OF THE REPLAT OF RHEAULT ADDITION
SECTION 24, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/17/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project BR-22-A1	County Cass	Parcel(s) 8A & 8B
Landowner Provident Partners LLC		
Mailing Address PO Box 9377, Fargo, ND 58106		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:


See attached exhibit(s) to the easements accompanying this Memorandum of Offer.

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 1,109.08 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	
Easement and Access Control	\$	<u>1,109.08</u>
Improvements on Right of Way*	\$	
Damages to Remainder	\$	

Total Offer \$ 1,109.08

*Description of Damages to Remainder are as follows:


 Owner Signature
 Signature hereby constitutes acceptance of offer as presented above.


 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo

Fargo City Commission has considered the offer and approves the same:



Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that PROVIDENT PARTNERS, LLC, a North Dakota limited liability company, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to it in hand paid the receipt whereof is hereby acknowledged, HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of road construction and activities appurtenant thereto, said land being more fully described, to-wit:

Parcel 8A

A temporary easement, over, under and across that part of Lot 1, of the REPLAT OF BLOCK C of the REPLAT OF PART OF RHEAULT ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

Commencing at the southwest corner of said Lot1; thence North 02 degrees 05 minutes 18 seconds West along the west line of said Lot 1, a distance of 158.42 feet to the point of beginning; thence continuing North 02 degrees 05 minutes 18 seconds West along said west line, a distance of 34.61 feet to the southeast corner of a parcel of land described in Warranty Deed, Document Number 797087, found in the Recorder's Office of said Cass County; thence North 86 degrees 29 minutes 14 seconds East along the south line of said Warranty Deed, Document Number 797087, a distance of 10.00 feet; thence South 02 degrees 05 minutes 18 seconds East along a line that is parallel with and 10.00 feet east of the west line of said Lot 1, a distance of 34.61 feet; thence South 86 degrees 29 minutes 14 seconds West, a distance of 10.00 feet to the point of beginning.

Said parcel contains 346 square feet, more or less, and is subject to existing easements of record.

Said parcel is pictorially represented on Exhibit "A" attached hereto and incorporated herein by reference.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.


This easement shall terminate at the completion of construction of the project, or on November 30, 2022, whichever occurs later.

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this 24 day of Jan, 202²²1.

(Signatures on the following page)

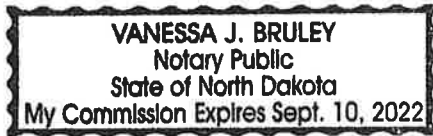
GRANTOR:

Provident Partners, LLC
a North Dakota limited liability company



By: C.J. Bernabucci
Its: Vice President

STATE OF North Dakota)
) ss.
COUNTY OF Cass)

On this 24th day of January, 2021, before me, a notary public in and for said county and state, personally appeared C.J. Bernabucci, to me known to be the Vice President of **Provident Partners, LLC**, a North Dakota limited liability company, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.



(SEAL)


Notary Public
Cass County, ND

GRANTEE:

City of Fargo, a North Dakota municipal
corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

Notary Public
Cass County, ND
My Commission expires:

(SEAL)

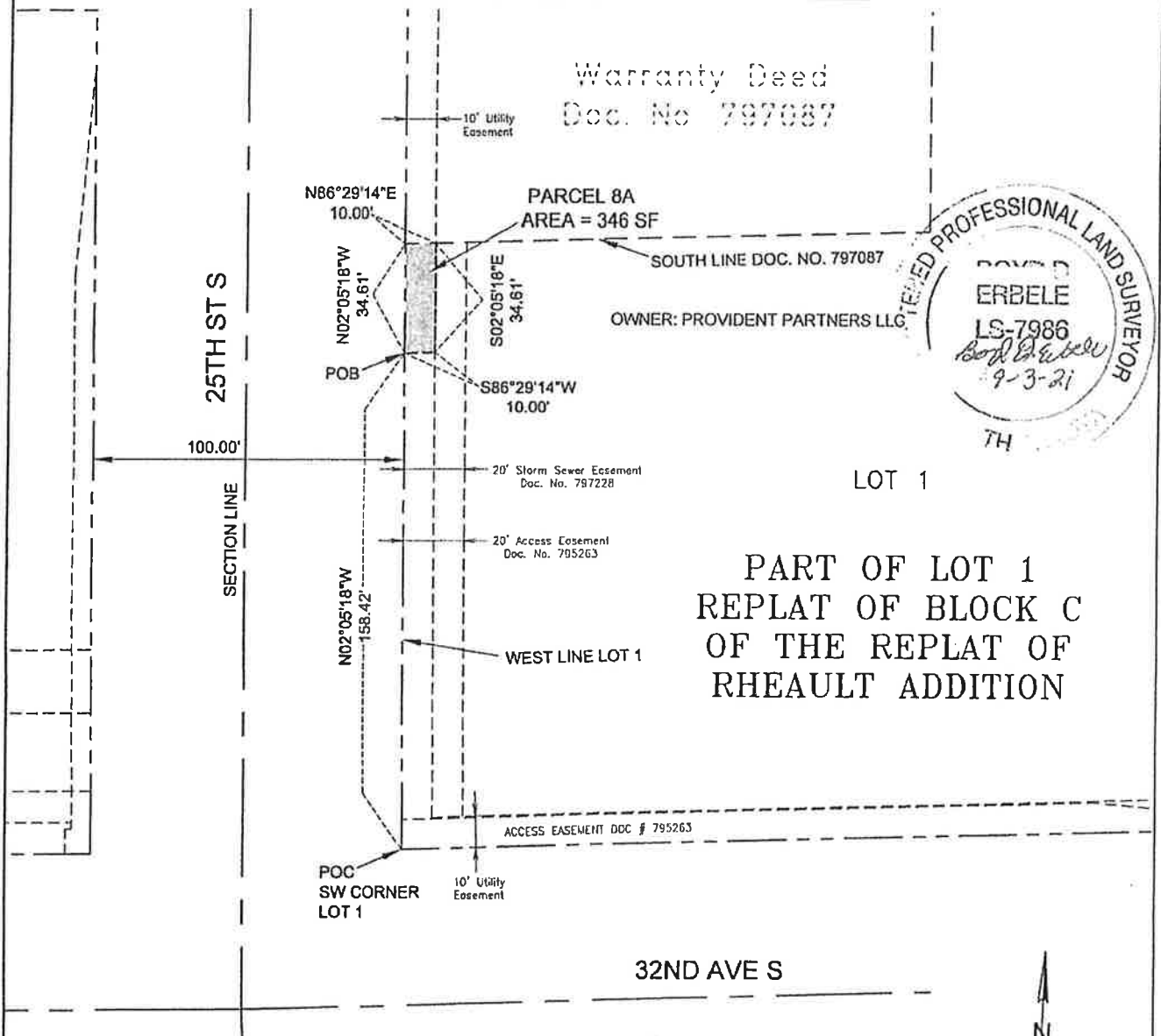
The legal description was prepared by:

Boyd D. Erbele
Registered Land Surveyor
LS-7986
Apex Engineering Group
4733 Amber Valley Parkway S.
Fargo, ND 58104
(701) 373-7980

This document was prepared by:

Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

EASEMENT EXHIBIT "A"



LEGEND

- PARCEL 8A
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING

Apex
Engineering Group

TEMPORARY EASEMENT - PARCEL 8A
32ND AVE S RECONSTRUCTION
PART OF LOT 1 REPLAT OF BLOCK C
OF THE REPLAT OF RHEAULT ADDITION
SECTION 24, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/03/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E

EASEMENT EXHIBIT "A"

Parcel 8A
(Temporary Easement)

A temporary easement, over, under and across that part of Lot 1, of the REPLAT OF BLOCK C of the REPLAT OF PART OF RHEAULT ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

Commencing at the southwest corner of said Lot 1; thence North 02 degrees 05 minutes 18 seconds West along the west line of said Lot 1, a distance of 158.42 feet to the point of beginning; thence continuing North 02 degrees 05 minutes 18 seconds West along said west line, a distance of 34.61 feet to the southeast corner of a parcel of land described in Warranty Deed, Document Number 797087, found in the Recorder's Office of said Cass County; thence North 86 degrees 29 minutes 14 seconds East along the south line of said Warranty Deed, Document Number 797087, a distance of 10.00 feet; thence South 02 degrees 05 minutes 18 seconds East along a line that is parallel with and 10.00 feet east of the west line of said Lot 1, a distance of 34.61 feet; thence South 86 degrees 29 minutes 14 seconds West, a distance of 10.00 feet to the point of beginning.

Said parcel contains 346 square feet, more or less, and is subject to existing easements of record.



CERTIFICATION

I, Boyd D. Erbele, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.

Signed Boyd D. Erbele
Boyd D. Erbele
North Dakota Professional Land Surveyor
License Number LS-7986

Date 7-3-2021



TEMPORARY EASEMENT - PARCEL 8A
32ND AVE S RECONSTRUCTION
PART OF LOT 1 REPLAT OF BLOCK C
OF THE REPLAT OF RHEAULT ADDITION
SECTION 24, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/03/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E

PERMANENT EASEMENT
(Street and Utility)

KNOW ALL MEN BY THESE PRESENTS that PROVIDENT PARTNERS, LLC, a North Dakota limited liability company, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, HEREBY GRANTS UNTO THE CITY OF FARGO, NORTH DAKOTA, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing a street and all other public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows:

Parcel 8B

A perpetual easement, over, under and across that part of Lot 1, of the REPLAT OF BLOCK C of the REPLAT OF PART OF RHEAULT ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

Commencing at the southwest corner of said Lot 1; thence North 02 degrees 05 minutes 18 seconds West along the west line of said Lot 1, a distance of 9.50 feet to the point of beginning; thence continuing North 02 degrees 05 minutes 18 seconds West along said west line, a distance of 5.50 feet; thence North 86 degrees 26 minutes 13 seconds East along a line that is parallel with the south line of said Lot 1, a distance of 10.00 feet; thence South 02 degrees 05 minutes 18 seconds East along a line that is parallel with the west line of said Lot 1, a distance of 5.50 feet; thence South 86 degrees 26 minutes 13 seconds West, a distance of 10.00 feet to the point of beginning.

Said parcel contains 55 square feet, more or less, and is subject to existing easements of record.

Said parcel is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said street and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said street and customary appurtenances was begun.

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 24 day of Jun, 202²²1.

(Signatures on the following page)

GRANTOR:

Provident Partners, LLC
a North Dakota limited liability company

[Signature]

By: C.T. Bernabucci

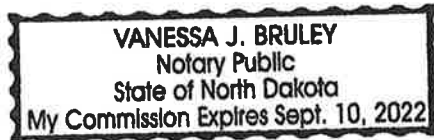
Its: Vice President

STATE OF North Dakota

COUNTY OF Cass

)
) ss.
)

On this 24th day of January ²²2021, before me, a notary public in and for said county and state, personally appeared C.T. Bernabucci, to me known to be the Vice President of **Provident Partners, LLC**, a North Dakota limited liability company, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.



(SEAL)

[Signature]
Notary Public
Cass County, ND

GRANTEE:

City of Fargo, a North Dakota municipal
corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:

Boyd D. Erbele
Registered Land Surveyor
LS-7986
Apex Engineering Group
4733 Amber Valley Parkway S.
Fargo, ND 58104
(701) 373-7980

This document was prepared by:

Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

EASEMENT EXHIBIT "A"

PART OF LOT 1
REPLAT OF BLOCK C
OF THE REPLAT OF
RHEAULT ADDITION

SECTION LINE

25TH ST S

WEST LINE LOT 1

20' Storm Sewer Easement
Doc. No. 79722820' Access Easement
Doc. No. 795263

LOT 1

OWNER: PROVIDENT PARTNERS LLC

N02°05'18"W
5.50'

POB

N02°05'18"W
9.50'POC
SW CORNER
LOT 1N86°26'13"E
10.00'S02°05'18"E
5.50'S86°26'13"W
10.00'10' Utility
Easement

ACCESS EASEMENT DOC # 795263

SOUTH LINE LOT 1

PARCEL 8B
AREA = 55 SF

32ND AVE S

50.00'

SECTION LINE

LEGEND

 PARCEL 8B

P.O.C. POINT OF COMMENCEMENT

P.O.B. POINT OF BEGINNING

Apex
Engineering Group

PERPETUAL EASEMENT - PARCEL 8B
32ND AVE S RECONSTRUCTION
PART OF LOT 1 REPLAT OF BLOCK C
OF THE REPLAT OF RHEAULT ADDITION
SECTION 24, T139N, R49W
FARGO, NORTH DAKOTA

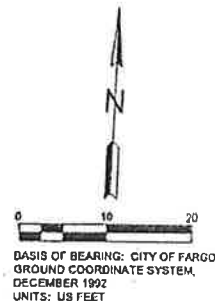
Apex Project #: 20.103.0063

Date: 09/17/2021

Drawn By: Mike J

Checked By: Boyd E

Approved By: Boyd E



EASEMENT EXHIBIT "A"

Parcel 8B
(Perpetual Easement)

A perpetual easement, over, under and across that part of Lot 1, of the REPLAT OF BLOCK C of the REPLAT OF PART OF RHEAULT ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

Commencing at the southwest corner of said Lot 1; thence North 02 degrees 05 minutes 18 seconds West along the west line of said Lot 1, a distance of 9.50 feet to the point of beginning; thence continuing North 02 degrees 05 minutes 18 seconds West along said west line, a distance of 5.50 feet; thence North 86 degrees 26 minutes 13 seconds East along a line that is parallel with the south line of said Lot 1, a distance of 10.00 feet; thence South 02 degrees 05 minutes 18 seconds East along a line that is parallel with the west line of said Lot 1, a distance of 5.50 feet; thence South 86 degrees 26 minutes 13 seconds West, a distance of 10.00 feet to the point of beginning.

Said parcel contains 55 square feet, more or less, and is subject to existing easements of record.



CERTIFICATION

I, Boyd D. Erbele, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.

Signed Boyd D. Erbele
 Boyd D. Erbele
 North Dakota Professional Land Surveyor
 License Number LS-7986

Date 9-17-2021



PERPETUAL EASEMENT - PARCEL 8B
 32ND AVE S RECONSTRUCTION
 PART OF LOT 1 REPLAT OF BLOCK C
 OF THE REPLAT OF RHEAULT ADDITION
 SECTION 24, T139N, R49W
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